



# Preventing Bullying and Harassment

## A Support Manual for Iowa's Sample District Harassment and Bullying Policy



Iowa  
Department of Education

May, 2005



# Preventing Bullying and Harassment

## A Support Manual for Iowa's Sample District Policy on Bullying and Harassment

Prepared for the State of Iowa  
Department of Education

by

Russell Skiba, Ph.D.  
Indiana University

May, 2005

### Preventing Bullying and Harassment

#### A Support Manual



# Preventing Bullying and Harassment

## A Support Manual

## About the Author

**Russell Skiba, Ph.D.**, is a Professor in Counseling and Educational Psychology at Indiana University. A member of the School Psychology faculty, he has worked primarily in the areas of emotional and behavioral disorders and school violence, and teaches and publishes in the areas of school violence, zero tolerance, and cultural diversity. Skiba has directed a number of federally funded research projects and published extensively in professional journals in the areas of school violence and equity in education. Skiba directed the Safe and Responsive Schools Project, a U.S. Department of Education grant that worked with schools in two states to implement a school restructuring model to develop alternatives to zero tolerance for addressing issues of school discipline and school violence. He testified before both house of congress and the U.S. Commission on Civil Rights on zero tolerance and minority disproportionality in school discipline. He received the operation PUSH/Rainbow Coalition “Push for Excellence” award for his work on minority disproportionality in discipline.”

State of Iowa  
**Department of Education**  
Grimes State Office Building  
Des Moines, Iowa 50319-0146

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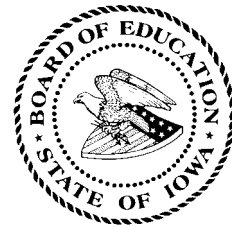
Lana Michelson, Chief  
Linda Miller, Consultant  
Sharon K. Willis, Graphic Artist

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Iowa Association of School Boards

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Iowa Department of Education

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Iowa Department of Education

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Iowa Department of Education

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Learning Supports: Character Education  
Iowa Department of Education

**Sharon Kay Willis**, *Graphic Artist*

Iowa Department of Education

**This manual is a supplement to the Safe Schools Leadership Handbook that was distributed to superintendents and principals in 2002.**

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### Iowa State Board of Education (2002) Resolution on Safe and Secure Learning Environ- ments

# Iowa State Board of Education Resolution

1st Day of August, 2002

**WHEREAS,** the Iowa State Board of Education strongly believes that the most important natural resource in the State of Iowa is children, and that all children in Iowa should be educated in a safe and secure environment;

**WHEREAS,** children learn more effectively when they are not distracted by concerns for their physical and emotional safety;

**WHEREAS,** more effective learning benefits not only the children being educated, but also their families, their local communities and entire state by producing better citizens who are prepared to contribute to their communities in a productive and emotionally healthy manner; and

**WHEREAS,** it is the direct and joint responsibility of all school administrators, all teachers, all other school staff, all school board members, parents, and community members to ensure that children are safe and secure in their learning environment;

**NOW, THEREFORE, BE IT RESOLVED** that the Iowa State Board of Education call to action all Iowa school administrators and board members to take the following steps:

1. Immediately, fully, and honestly assess whether their pupils are being provided educational programs and services in a safe and secure learning environment.
2. Facilitate dialogues with pupils, parents, and community members to clarify the community expectations for a safe and secure learning environment and to engage all in establishing these expectations so that all pupils can concentrate on learning in an environment that provides physical and emotional security.



3. Review the content and implementation of the local board's harassment policy with pupils, parents, and others and make necessary and appropriate changes.
4. If deemed necessary provide staff supervision in such areas as hallways and locker rooms.
5. Provide in-service training for all staff regarding the need for and importance of a safe and secure learning environment.

**SO RESOLVED** this 1st day of August, 2002.

/s/ Gene E. Vincent, President  
/s/ Sally J. Frudden, Vice President  
/s/ James Billings  
/s/ Charles C. Edwards, Jr.  
/s/ Sr. Jude Fitzpatrick  
/s/ Gregory D. McClain  
/s/ Mary Jean Montgomery  
/s/ Donald L. Roby  
/s/ Kay E. Wagner

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### Iowa State Board of Education (2002) Resolution on Safe and Secure Learning Environ- ments

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### Governor's Letter



THOMAS J. VILSACK  
GOVERNOR

**OFFICE OF THE GOVERNOR**  
STATE CAPITOL  
DES MOINES, IOWA 50319  
515 281-5211  
FAX 515-281-6611

SALLY J. PEDERSON  
LT. GOVERNOR

Dear Educational Leader:

All students have a right to feel safe in school. Every student should feel like there is at least one adult in school that they can turn to in a time of need. More than any other place in the community, schools should provide a safe haven for all students. Sadly, this is not our current reality.

During the 2004 legislative session, we proposed legislation designed to ensure that schools would implement efforts to counter the rising tide of bullying, harassment, and hazing in schools. This goal was not realized.

Yet the problems remain. Nearly 97,000 students participated in the 2002 version of the Iowa Youth Survey. What they said to us is startling:

- 72% reported that class was stopped at some point in the last three weeks to deal with a major behavioral disruption.
- 44% said students in their schools do not treat each other with respect.
- 31% felt that their friends would not think it wrong if they started a fight with someone.
- 20% felt that violence was not the "worst" way to resolve a conflict.
- 19% have beaten up or fought someone because they were made angry.
- 19% have verbally threatened to physically harm someone.
- 17% feel that their teachers do not care about them.
- 17% feel like there is no one at their school to turn to in a time of need.
- 17% do not feel safe at school.

We must act now to correct these problems and promise kids safe schools. To that end, our Administration is taking the following actions:

- Development of a sample local board policy that aligns to the legislation we proposed in 2004. We would like to see all schools adopt policies prohibiting harassment, bullying, hazing, or any other intentional victimization based on real or perceived sexual orientation, race, sex, creed, color, national origin, religion, marital status, or disability. This sample policy is included with this cover letter.
- Development of a statewide cadre of 20 certified trainers in the internationally renowned Olweus Bullying Prevention Program.
- A statewide conference targeted at schools and other community partners to address bullying and harassment issues and reforms.
- Modification of the existing Iowa Youth Survey to enhance data collection on bullying, harassment, and hazing issues.

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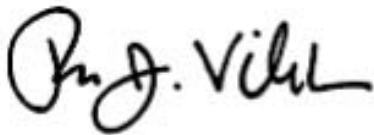
- Implementation of Learning Supports for School Students. This Department of Education effort will work to create learning environments that are safe, supportive and conducive to learning and to foster healthy social, emotional, cognitive and behavioral development of Iowa's children and youth.
- Creation of a "Kid Safe Schools" category of recognition for schools and school districts that show exemplary progress in addressing bullying, harassment, and hazing issues.

When faced with the reality that some of our students are struggling with these issues, it is incumbent on us as responsible adults and educational leaders to take immediate corrective action. Too many children are suffering because of bullying and harassment. Bullying and harassment are contributing to poor student achievement, increased absenteeism, increased risk of dropping out, and increased juvenile crime rates.

It is our expectation that the sample policy accompanying this letter will be given your highest consideration as you work to enhance your existing harassment policies. Additionally, every school needs to take aggressive action to counter the culture existing in every community that continues to reinforce patterns of behavior that lead to the harassment, bullying, or hazing of any student.

Your help is needed. The future of many of Iowa's children depends on this effort.

Sincerely,



Thomas J. Vilsack  
Governor



Sally J. Pederson  
Lt. Governor

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### Director's Letter



THOMAS J. VILSACK, GOVERNOR  
SALLY J. PEDERSON, LT. GOVERNOR

STATE OF IOWA

DEPARTMENT OF EDUCATION  
JUDY A. JEFFREY, DIRECTOR

April 2005

Dear Iowa Educator,

As part of our ongoing focus to help schools ensure a safe and nurturing environment for all students, the Iowa Department of Education is providing this "Support Manual for Iowa's Sample District Harassment and Bullying Policy" to guide districts in the implementation of the sample policy issued by Governor Vilsack in the Fall of 2004.

The support manual provides a wide range of research-based strategies and practical guides to help schools not only address but also prevent harassment, bullying, and hazing in schools. It was prepared by Dr. Russell Skiba from the Safe and Responsive Schools Project at Indiana University in collaboration with representatives of the Iowa Association of School Boards, the School Administrators of Iowa, and the Iowa Department of Education.

Encouraging dignity and respect for all students is an important responsibility for educators. We hope that the guidebook will enhance your learning supports efforts and provide needed information on how to address problems of bullying, harassment, and hazing in your schools. Thank you for the work you do to provide Iowa's students with the safe, supportive, and caring learning environments they need to succeed in school while helping them develop the skills and attitudes critical to their success in life.

Sincerely

A handwritten signature in cursive script that reads "Judy A. Jeffrey".

Judy A. Jeffrey, Director

Grimes State Office Building - Des Moines, Iowa 50319-0146

PHONE (515) 281-5294 FAX (515) 242-5988

[www.state.ia.us/educate](http://www.state.ia.us/educate)

Helping Communities Meet the Learning Needs of All Their Children and Adults

# Student Bullying and Harassment

The school district is committed to providing all students with a safe and civil school environment in which all members of the school community are treated with dignity and respect. To that end, the school district has in place policies, procedures, and practices that are designed to reduce and eliminate bullying and harassment as well as process and procedures to deal with incidents of bullying and harassment when they occur. Bullying and harassment of students by other students, school officials, faculty, staff, and volunteers who have direct contact with students will not be tolerated in the school district. The school district prohibits harassment, bullying, hazing, or any other victimization based on real or perceived race, sex, creed, color, national origin, religion, marital status, disability, sexual orientation, physical appearance, and/or personality characteristics.

This policy is in effect while students are on property within the jurisdiction of the school district; while on school-owned and/or school-operated vehicles; while attending or engaged in school sponsored activities; and while away from school grounds if the misconduct directly affects the good order, efficient management and welfare of the school district. If, after an investigation, a student is found to be in violation of this policy, the student shall be disciplined by measures up to and including suspension and expulsion.

Harassment as set forth above may include, but is not limited to, the following behavior/overt acts and or circumstances:

- Verbal, nonverbal, physical or written harassment, bullying, hazing, or other victimization that have the purpose or effect of causing injury, discomfort, fear, or suffering to the victim;
- Repeated remarks of a demeaning nature that have the purpose or effect of causing injury, discomfort, fear or suffering to the victim;
- Implied or explicit threats concerning one's grades, achievements, property, etc., that have the purpose or effect of causing injury, discomfort, fear or suffering to the victim;
- Demeaning jokes, stories or activities directed at the student that have the purpose or effect of causing injury, discomfort, fear or suffering to the victim; and/or
- Unreasonable interference with a student's performance or creation of an intimidating, offensive or hostile learning environment.

Sexual harassment means unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

- Submission to the conduct is made, either implicitly or explicitly, a term or condition of the student's education or benefits;
- Submission to or rejection of the conduct by a school employee is used as the basis for academic decisions affecting that student; or
- The conduct has the purpose or effect of substantially interfering with the student's academic performance by creating intimidating, hostile or offensive education environment.

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## Iowa Sample District Policy on Harassment and Bullying

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### Iowa Sample District Policy on Harass- ment and Bullying

In situations between students and school officials, faculty, staff or volunteers who have direct contact with students, bullying and harassment may also include the following behaviors:

- Requiring that a student submit to bullying or harassment by another student, either explicitly or implicitly, as a term or condition of the targeted student's education or participation in school programs or activities; and/or
- Submission to, or rejection of, such conduct by a student is used as a basis for decisions affecting the student.

Retaliation against a student because the student has filed a bullying or harassment complaint or assisted or participated in a harassment investigation or proceeding is also prohibited. Students who knowingly file false harassment complaints or give false statements in an investigation shall be subject to discipline by measures up to and including suspension and expulsion, as shall any student who is found to have retaliated against another in violation of this policy.

The district will promptly and reasonably investigate allegations of harassment. The building principal, Level I investigator, or designee will be responsible for handling all complaints by students alleging harassment.

It will also be the responsibility of the superintendent, in conjunction with the investigator and principals, to develop procedures regarding this policy. The superintendent will also be responsible for organizing training programs for students, school officials, faculty, staff, and volunteers who have direct contact with students. The training will include how to recognize harassment and what to do in case a student is harassed. It will also include proven effective harassment prevention strategies. The superintendent will also develop a process for evaluating the effectiveness of the policy in reducing bullying and harassment in the school district. The superintendent shall report to the board on the progress of reducing bullying and harassment in the school district.

# Introduction

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# Introduction

As a state and nation, we have come to understand the profound seriousness of the problem of bullying and harassment for our schools. No longer is it possible to dismiss these behaviors as harmless schoolyard rituals. Rather, recent events and new data have demonstrated conclusively that bullying and harassment pose a real and serious threat to the safety of our schools, and to the lives of our students. Thus, in August 2004 the Governor's Office released the Iowa Sample Policy on Bullying and Harassment. That policy provides a framework for educators and policymakers to address bullying, harassment, sexual harassment, and hazing. This procedural manual is intended as a follow-up to the Sample Policy, to provide a knowledge base and practical guidance in implementing that policy.

## Primary Prevention Model for School Violence Prevention

Just as our understanding of the critical importance of addressing bullying and harassment has changed, so too has our knowledge of how best to intervene in dealing with school disruption and violence. With an ever-expanding knowledge base we have begun to move from simply reacting to disruptive incidents and interpersonal violence, towards developing comprehensive programs of early intervention and prevention. In the same way that we no longer punish academic failure with the dunce cap, best practice in violence prevention has shown that the most effective approach is to teach students alternatives, and promote a climate of tolerance and respect.

A three-tiered model of youth violence prevention organizes violence prevention efforts. Figure 1 represents the three levels of a primary prevention model:

- In order to promote a safe and responsive climate for all students, *primary prevention* efforts are implemented school-wide.
- At the *secondary or indicated prevention* level, schools implement early screening or identification efforts for children who may be at-risk for violence, and utilize programs such as anger management or mentoring that can help reconnect these students with school and other institutions.
- Despite our best efforts, it is likely that there will always be some level of disruption, aggression, and perhaps violence requiring an appropriate response. *Tertiary* interventions are targeted at those students who have already engaged in violence and disruption.

## Applying the Model to Bullying Prevention

This same model can be applied to efforts to address bullying, harassment, sexual harassment, and hazing. In the past, efforts to curb bullying and harassment, when they occurred at all, tended to happen after the fact, in reaction to incidents of bullying or harassment that had already occurred. We have learned however, that the most effective approaches for addressing bullying and harassment are compre-

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hensive, addressing all three levels of prevention. In Sections I and II of this manual, specific programs and interventions to address these problems are listed and described. These programs are organized within the primary prevention framework:

- **Primary Prevention:** Schoolwide efforts, such as student assemblies and classroom discussion, promote a new understanding among students, staff, and parents of the importance of addressing bullying and harassment. Schoolwide programs are implemented to teach students what they need to know to increase overall school civility and tolerance.
- **Secondary Prevention:** Efforts are directed toward situations or students that may create a risk for bullying and harassment. Students and staff can identify areas of the school where bullying is more likely to occur. Surveys of students can identify how much bullying occurs and in what situations. Both students and staff should be encouraged to report incidents of bullying and harassment in order to reduce risk in the long term.
- **Tertiary Prevention:** Sections II and III of this manual present practical suggestions to schools concerning reporting, investigation, and intervention after bullying and harassment have occurred. Having available a comprehensive array of possible reactions that goes well beyond suspension and expulsion, sends an important message to students and parents that the school is serious about reducing bullying and harassment, and has a range of resources with which to address the problem.

## Organization of the Manual

This manual is intended to serve as a procedural guide to implementing the policies contained in Iowa's Sample District Harassment and Bullying Policy. The manual is organized into four sections.

- **Section I: Preventing Bullying and Harassment**, summarizes what we know about the characteristics of bullying/harassment and best practices in intervention and prevention of bullying and harassment.
- **Section II: Developing Evidence-Based Policies and Practices** provides practical guidance on the implementation of bullying and harassment policies. The section is framed around answers to common questions in the areas of prevention, reporting, investigation, intervention, and evaluation.
- **Section III: Harassment Investigation Procedures** provides specific guidelines and suggestions to use for reporting and investigating complaints of bullying and harassment.
- **Appendices—Resources and Supplementary Materials.** Appendix A provides definitions of bullying, harassment, sexual harassment, and hazing drawn from the professional and legal literature. Appendix B provides resources such as websites, commercially available programs, and videos that may be helpful to schools and school districts in implementing bullying and harassment policies and practices. Appendix C includes guidance from the U.S. Department of Education Office for Civil Rights and the Iowa Commission on Civil Rights on sexual harassment and racial harassment. Finally, Appendix D provides a set of reproducible forms that can be used for reporting, interviewing, and evaluation.

# Integrating Bullying and Harassment Policy

Iowa's Sample District Policy is unique among state efforts to address this issue by bringing together, under one policy, guidelines for addressing bullying, harassment, sexual harassment, and hazing. We hope that, in combination, the Sample Policy and these procedural guidelines provide both the knowledge *and* the practical guidance to build school climates of tolerance and respect for all children.

## Footnotes to the Introduction

<sup>1</sup>American Psychological Association. (1993). *Violence and youth: Psychology's response*. Washington, DC: Author; see also;

Mrazek, P.J., & Haggerty, R.J., Institute of Medicine. (Eds.)(1994). *Reducing risk for mental disorders: Frontiers for preventive intervention research*. Washington, D.C.: National Academies Press.

Walker, H.M., Horner, R.H. Sugai, G., Bullis, M., Sprague, J.R., Bricker, D., Kaufman, M.J. (1996). Integrated approaches to preventing antisocial behavior patterns among school-age children and youth. *Journal of Emotional and Behavioral Disorders*, 4 (4), 194-209.

Dwyer, K., Osher, D., & Warger, C. (1998). *Early warning, timely response: A guide to safe schools*. Washington, DC: U.S. Department of Education.

Elliott, D., Hatot, N.J. Sirovatka, P, & Potter, B.B. (2001). *Youth violence: A report of the Surgeon General*. Washington, DC: U.S. Surgeon General.

Osher, D., Dwyer, K., Jackson, S. (2004). *Safe, supportive, and successful schools: Step by Step*. Boston: Sopris West.

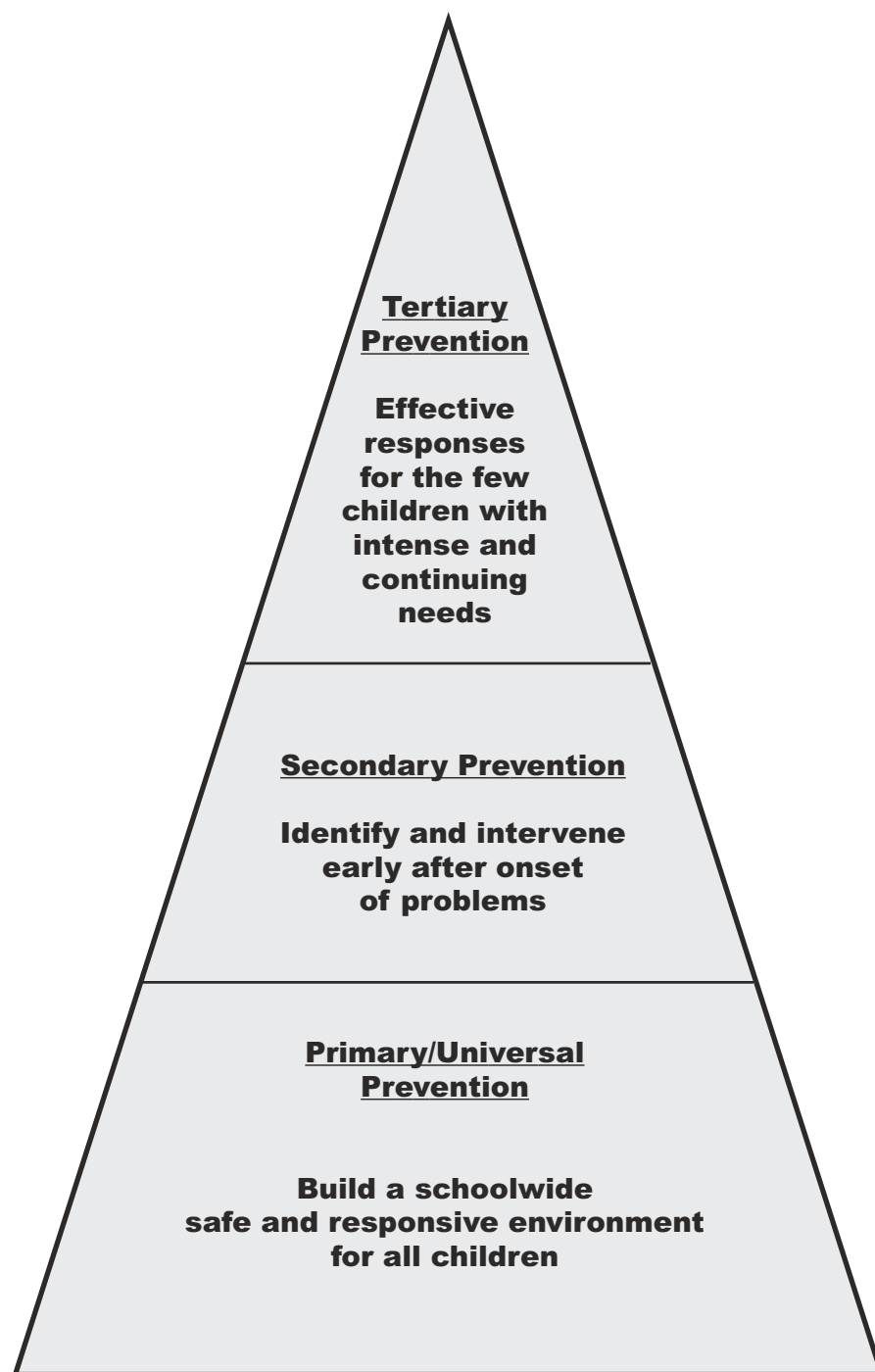
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**Figure 1: The Three-Level Approach to Intervention**



This triangle models the comprehensive three-level approach that is the most efficient, cost-effective way to improve school discipline, safety, and academic achievement. It is adapted from a model presented in *Safe, Supportive, and Successful Schools: Step by Step* (Osher, Dwyer, and Jackson, 2004) as a framework for building a comprehensive plan.

# SECTION I: BULLYING AND HARASSMENT PREVENTION

## Preventing Bullying and Harrassment

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In the last few years, our awareness of the extent and seriousness of bullying and peer harassment has increased dramatically. We have learned that harassment and intimidation among children are not simply a ‘rite of passage’ but can pose a serious threat to student mental health and increase the risk of deadly violence. Many of the perpetrators of the highly publicized school shootings of recent years saw themselves as targets of repeated harassment. Fortunately, effective programs have been developed in recent years to address bullying and peer harassment in school. Bullying prevention programs are school-wide efforts designed to send a message that bullying will not be tolerated in school. Programs that are carefully designed and implemented can improve school climate by educating staff and students to recognize and respond to instances of bullying.

## I. What Do We Know about Bullying and Harassment?

### Characteristics of Bullying and Harassment

**How do we define bullying, harassment, and hazing?** Peer harassment or bullying is most commonly defined as a student being exposed, repeatedly and over time, to intentional injury or discomfort inflicted by one or more other students.<sup>1</sup> Bullying and harassment imply an imbalance in power or strength in which one child is victimized by others.<sup>2</sup> Harassment can also take the form of an organized ritual through *hazing*. More complete definitions of bullying, harassment, sexual harassment, and hazing are included in Appendix A.

The Iowa Sample Policy covers harassment, bullying, sexual harassment, and hazing, provides examples of representative behaviors for these problems, and explicitly identifies the groups covered by the policy. The Iowa policy is inclusive under the umbrella heading of “harassment,” emphasizing that bullying, harassment, sexual harassment, and hazing place students from a wide variety of targeted groups at serious risk. This sample policy covers members of classifications protected by Iowa law: race, gender, disability, religion, marital status, and national origin. In addition, the policy also covers students who are not necessarily members of protected classes, but who are bullied or harassed in reaction to their personality traits and/or other personal characteristics. As noted below, both bullying and harassment have serious consequences for students and schools, and both are explicitly included in the Iowa Sample Policy (See Preface).

**How extensive are bullying, harassment, and hazing?** Surprisingly large proportions of students are bullied or harassed in schools. In the most recent national survey in the United States, published in the *Journal of the American Medical Association*, approximately 30 percent of students reported some

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involvement with moderate or frequent bullying, 13 percent as bullies, 11 percent as victims, and 6 percent as both bullies and victims. Bullying is most frequent in grades six through eight.<sup>3</sup> The prevalence of bullying/harassment has consistently been reported as so high that some have suggested that *any* school should anticipate bullying occurring at some level of severity.<sup>4</sup> Observational studies in schools have found that bullying may occur on playgrounds as frequently as once every seven minutes.<sup>5</sup> Most incidents of peer harassment occur in places with little adult supervision (e.g., playgrounds, hallways, buses), although one study found bullying in classrooms at a rate of one to two incidents per hour.<sup>6</sup> Hazing of students as part of student athletics also appears to be common among secondary students. A survey of 1,105 sixth to twelfth grade athletes found that 17.4 percent reported having been subject to practices that may be characterized as hazing.<sup>7</sup> Many did not comprehend the abusive and potentially dangerous nature of hazing.

**Characteristics of bullies and targets of harassment.** Bullies are typically physically stronger than their targets and have more positive attitudes toward the use of violence than other students.<sup>8</sup> Both targets and aggressors tend to be more socially rejected.<sup>9</sup> Targets of bullying may be more anxious and insecure than other students and may react by crying, withdrawal, or avoidance when attacked.<sup>10</sup> Unfortunately, such reactions may only reinforce the bully's sense of power over the targets. Over time, a surprising number of students who have been bullied begin to engage in bullying behavior themselves.<sup>11</sup>

Although boys have been reported to be more often the targets and perpetrators of bullying,<sup>12</sup> awareness of bullying and harassment among girls has increased in recent years. Harassment appears to take different forms among males and females. While boys engage in more overt and physical forms of bullying, girls engage in higher rates of what has come to be called *relational aggression*: spreading rumors, ostracizing or isolating, making suggestive sexual comments, and verbal aggression or intimidation.<sup>13</sup> As noted below, however, the effects of harassment on girls are no less serious than for boys.

Findings on the prevalence of bullying among ethnic minority students are inconclusive. Although Latino students are significantly more likely to be targets of bullying than other students, findings for African American rates of bullying have been inconsistent.<sup>14</sup> It is important to note, however, that incidents of bullying by race in many cases may be underestimated due to an overly narrow definition of bullying focusing only on direct victimization of an individual. The anonymous and seemingly non-targeted nature of many incidents of racial harassment have not always been included in standard definitions of bullying. Yet when a student of color happens upon a racial slur scrawled across the restroom wall, there can be no doubt that the effects of that experience are as disturbing and potentially destructive as a one-on-one incident of bullying in which the target student knows his or her harasser. In 2003, the federal Office for Civil Rights of the U.S. Department of Education received over 5,000 complaints of racial harassment.<sup>15</sup>

Bullying and harassment are also clearly connected to issues of perceived or actual sexual orientation. Surveys of school safety and school violence have found that gay, lesbian, bisexual, and transsexual (GLBT) students are two to three times more likely than other students to report missing school because they are afraid for their personal safety.<sup>16</sup> While none of the school shooters in recent years has been explicitly identified as GLBT, recent analyses have shown that homophobia, in the form of homosexual taunts or slurs, has been a key element in the bullying that took place leading up to a large proportion of school shooting incidents.<sup>17</sup>

## **How Serious is the Problem? Effects of Bullying and Harassment**

Deadly violence in our schools in recent years has shattered the myth that bullying is just a schoolyard ritual about which nothing can be done. Bullying has serious consequences, not only for targets and perpetrators, but for the safety of our nation's schools. In classrooms exhibiting high number of bullying problems, students tend to feel less safe and are less satisfied with school life in general.<sup>18</sup>

Bullying/harassment also appears to be a risk factor for serious school violence. In the most extensive analysis to date of school shootings in the United States, the Secret Service found that over two-thirds of those students who had engaged in a shooting viewed their act as revenge for continuing and long-term harassment and intimidation by peers.<sup>19</sup>

The experience of being harassed appears to have important effects on both the short- and long-term adjustment of both targets and perpetrators of bullying. After having been bullied, targets often report feelings of anger, self-pity, and a need for revenge.<sup>20</sup> Left untreated, such reactions can become feelings of rejection and loneliness, depression, physical illness, and even suicide. The effects are no less important for relational harassment. Even in reaction to less physical bullying, boys report more feelings of peer rejection and loneliness, while girls report feeling less peer acceptance, more rejection, and more impulsive behaviors as a result of non-physical bullying.<sup>21</sup> Finally, negative outcomes of bullying and harassment are not limited to those students who are targeted; students who engage in aggression and bullying behaviors during their school years are more likely to engage in criminal and aggressive behavior after adolescence.<sup>22</sup>

## **II. What Should We Do about Bullying and Harassment?**

### **Typical Responses to Bullying and Harassment**

Despite these serious effects, bullying is most often tolerated or ignored by school personnel. Teachers appear to detect only a small proportion of bullying incidents, and intervene in only a small proportion of those incidents. The highest estimates show teachers intervening in only a quarter of bullying incidents, while some have estimated that teacher intervention occurs less than 5 percent of the time.<sup>23</sup> Students are even less likely than teachers to intervene in harassment, perhaps due to widely held attitudes among students about bullying. Students interviewed about bullying indicated the belief that bullied students are at least partly to blame for their victimization, that the experience of being bullied makes the targets tougher, or that harassment is simply done "in fun."<sup>24</sup>

### **Implementing Effective Bullying and Harassment Prevention Programs**

The adverse effects of harassment on the psychological well-being of students who are targeted can present significant barriers to their learning and success in

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schools. Absenteeism, fearfulness for personal safety, poor sense of efficacy and low self-esteem can interfere with academic achievement and successful development of social relationships. To remove these barriers and ameliorate their effects, schools should include, among their systems of learning supports, interventions that prevent bullying, harassment, and hazing. Such interventions fit well into a school's learning supports curriculum that creates "safe, healthful, and caring learning environments."

**Moving from reaction to prevention.** In many schools, intervention consists of little more than an administrator talking with either the bully, the target, or both. Yet individual interventions do not appear to be sufficient to reduce harassment or bullying. As is the case with school violence and disruption in general, the most effective bullying and harassment prevention programs are comprehensive in scope, addressing harassment at all levels: schoolwide (e.g., formulating and publicizing new school policy, school assemblies), classroom (e.g., class discussion, enforcing classroom rules against bullying), and individual (e.g., individual and family counseling).<sup>25</sup> Other promising interventions include assertiveness training for targets, or family counseling for the bully's family, if it is clear that the bullying behavior is being learned or reinforced at home.<sup>26</sup> Although some methods of prevention, such as the Shared Concerns method, suggest bringing the bully and target together, Olweus and others argue that the power differential between the bully and target make negotiation-based approaches such as peer mediation or one-to-one problem solving inappropriate for addressing bullying issues.<sup>27</sup>

Two key components are required for success in implementing bullying prevention programs: 1) activities designed to create awareness of the problem, and 2) adult involvement in order to change the situation. To create a school climate that discourages bullying and harassment, school staff and parents must become aware of the extent of bullying and harassment in their own school. Reducing peer harassment also requires a commitment on the part of all adults in the school community that bullying is unacceptable behavior among students and should be reduced or eliminated.

**Program coordination.** All bullying prevention programs require some coordination of bullying prevention activities. Most programs suggest convening a bullying prevention committee at the school level consisting of teachers, administrators, students, and parents. In order to ensure that new policies and practices are not an "add-on" for teachers and principals, it is highly recommended that such work be integrated into the agenda of existing school committees.

**Increasing awareness.** The typical first step for a bullying prevention committee is to assess the extent of the problem by administering an anonymous, age-appropriate student survey on the topic of bullying, available as part of most bullying prevention programs. Such surveys provide data on the number of students who report being bullied/harassed or who report bullying others, the types of bullying that occur, the locations in which bullying occurs, and the frequency with which others have attempted to intervene to stop bullying. By increasing understanding and awareness of the extent of the problem, these data motivate teachers, administrators, parents, and students to take further steps to address the problem.

Finally, in the specific case of harassment, staff are often unclear about the legal regulations concerning harassment in general, or sexual harassment in particular. Bringing in a Department of Education or school district attorney to conduct a group training on harassment policy and procedures can help improve schoolwide consistency in responding to harassment.



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**Components of effective programs.** Effective prevention programs rely on a number of components to reduce and prevent bullying and harassment problems. Through improved supervision, classroom rules against harassment, positive and negative consequences for following and violating rules, and serious talks with the bullies and targets, bullying prevention plans strive to develop a school environment that provides a consistent message that bullying and harassment will not be tolerated. Other options include a school conference day to discuss bullying, meetings with parents of bullies and targets, and regular classroom meetings. At the elementary level, existing curriculum can be supplemented with worksheets, role plays, and relevant literature on bullying and harassment.

**Training.** The amount of training time necessary for school staff depends on the scope of an individual school's program. A new schoolwide policy regarding bullying and harassment, expectations of staff and students, definitions of bullying and harassment, and responsibilities of staff for reporting and intervention should be presented as part of staff training. Brief follow-up meetings a few times during the school term are likely to be important in addressing difficulties that may emerge in implementing the program.

**Evaluating bullying prevention.** As in any intervention program, it is important to evaluate the effects of a bullying prevention program to determine how well it is working. Questionnaires, surveys, and checklists can be used to measure the effectiveness of the program, identify problem areas, and fine-tune policies and procedures. Other methods of evaluation include open-ended interviews with students, analyzing attendance records, and tracking documented incidents and behavioral reports. Collecting and sharing ongoing data with teachers and students encourages staff to continue to follow through on policies and procedures.

## Outcomes of Effective Prevention Programs

**How effective are bullying and harassment prevention programs?** Extensive research has shown that well-designed programs can reduce, eliminate, and prevent bullying problems, and significantly improve overall school climate. As a result of a comprehensive intervention program, Olweus and colleagues reported a 50 percent decrease in bullying incidents, reductions in the intensity of bullying, and reductions in the number of new victims.<sup>28</sup> In addition, fighting, vandalism, and truancy all decreased, while general student satisfaction with school increased. Using a similar whole-school approach, the Sheffield Anti-Bullying Project found that, as victims become more likely to report harassment, there was a decrease over time in both the number of students bullied and the number of identified bullies in participating schools.<sup>29</sup>

## Conclusion

In summary, bullying and harassment are extremely serious matters involving a substantial number of students. Bullying and harassment place individual students at risk for a range of negative outcomes from lowered self-esteem to decreased academic achievement to serious aggression, suicide, and increased risk for future incarceration. Incidents of bullying and harassment, if left unaddressed, create a less satisfactory and effective school climate, and may place a school at risk for

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incidents of serious violence. Definitions of bullying and harassment emphasize a power differential. This power differential can be either at the individual level between a bully and a target, or at the group level, targeting individuals from traditionally under-represented or marginalized groups in order to create or maintain a lower status for those individuals. Bullying, harassment, and hazing all pose a serious risk for negative outcomes for individual students and schools and must all be addressed under Iowa policy.

Effective prevention and intervention involve a.) an improved understanding of the extent and seriousness of the problem, and b.) the implementation of comprehensive proactive programs that create a climate in which it is clear that bullying and harassment will not be tolerated. Research suggests that most bullying occurrences are undetected or ignored, leading to detrimental effects for targets, perpetrators, and the school climate. Schools today are beginning to take action to prevent peer harassment given the widespread prevalence of bullying and the potentially deadly consequences of allowing peer harassment in schools. Well-conducted, comprehensive bullying and harassment prevention programs can be effective in reducing the number of bullying incidents and creating a climate that discourages bullying behavior. By emphasizing proactive and comprehensive prevention and intervention for both individual bullying, and the harassment of individuals from targeted groups, Iowa's Sample District Harassment and Bullying Policy is intended to guide schools towards promoting an atmosphere of respect and tolerance for all students.

## Footnotes to Section I

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- <sup>10</sup>Olweus, 1993.
- <sup>11</sup>Sharp, S. (1996). Self-esteem, response style, and victimization. *School Psychology International*, 17, 347-357.
- <sup>12</sup>Nansel et al.
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- <sup>15</sup>Office for Civil Rights Annual Report to Congress FY 2003. Washington, D.C.: USDOE Office for Civil Rights. (Appendix A: FY 2003 Complaint Receipts by OCR Enforcement Offices. [http://www.ed.gov/about/offices/list/ocr/annrpt2003/report\\_pg22.html#appa](http://www.ed.gov/about/offices/list/ocr/annrpt2003/report_pg22.html#appa)

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# Section II:

## Developing Evidence-Based Policy and Practices

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# SECTION II: Developing Evidence-Based Policy and Practices

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## 1. Prevention: Creating a Climate Free of Bullying and Harassment

### What practical actions can we take to change the school climate?

Comprehensive strategies for implementing bullying and harassment prevention programs are available in a number of the resources listed in Appendix A. As Olweus and Limber (1999) suggest, reducing and eliminating bullying and harassment necessitates two elements: a) becoming aware of the extent of bullying, and b) taking action to change the situation.

**Raising awareness.** Since parents, students, and school staff may be unaware of the extent of school bullying, or may deny that bullying and harassment are a problem, methods for raising awareness represent an important first step. Two actions are widely recommended in raising awareness.

- *Distribute a schoolwide bullying survey.* Teachers, parents, and students are often unaware of the true extent of bullying. Thus, data from student surveys can educate students, teachers, and parents about the extent of bullying and harassment, and can serve as a baseline for future efforts. Good examples of surveys include the Revised Olweus Bully/Victim Questionnaire ([www.colorado.edu/cspv/blueprints/model/BPPmaterials.html](http://www.colorado.edu/cspv/blueprints/model/BPPmaterials.html)) and a reproducible survey found in Hoover and Oliver's *The Bullying Prevention Handbook*. (See Appendix B. Resources and Programs).
- *Strive to gain staff commitment.* For bullying and harassment prevention to succeed, there must be a strong commitment on the part of staff. Presentations and discussions at faculty and committee meetings can be used to raise staff awareness and gain needed buy-in for new programs and policies.

**Taking action.** Changing school climate, with respect to bullying and harassment, necessitates a commitment to school practice and policy that makes a clear statement that “bullying and harassment will not be tolerated at our school.” The following are some of the actions widely recommended for creating change in school climate:

- *Designate individuals to coordinate schoolwide bullying prevention efforts.* In order to be successful, both bullying surveys and ongoing activities must be coordinated and the implementation of programs monitored.

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- *Establish and enforce school rules and policies related to bullying.* Schoolwide bullying prevention programs almost universally recommend that staff must be involved in the writing of new school policy for it to be effective. They also recommend the involvement of both parents and students in exploring and assisting in the development of anti-bullying and harassment policies.
- *Increase adult supervision in locations where bullying occurs.* Increase adult supervision in bullying “hotspots” can reduce the incidence of bullying, especially if those adults are trained to recognize bullying/harassment and intervene whenever it occurs.
- *Schoolwide assembly/conference.* A schoolwide convocation represents an important opportunity to communicate new policies to students and initiate a schoolwide dialogue on bullying. A number of videos, such as the State of Iowa Department of Education’s *Changing Perspectives: Paving the Path to Bully-Free Schools* or the National School Safety Center’s video *Set Straight on Bullies*, may provide a good introduction to the topic of bullying. Local educational or legal experts or representatives of law enforcement can be called upon to make a presentation that highlights the seriousness of the issue.
- *Devote classroom time to bullying prevention.* Classroom discussion serves as a bridge between schoolwide policy and student concerns. Discussion can encourage students to identify how frequently they witness bullying and harassment, address misconceptions, and engage students in taking constructive action.
- *Intervene consistently when bullying is observed.* Consistent intervention on the part of all staff when bullying is observed sends a clear message to students that bullying and harassment policies will be seriously enforced.

Changes in school policy and practice are most effective when they are not simply added to other responsibilities of teachers and administrators, but are integrated within existing school structures. Bullying and harassment activities can be integrated into the agenda of a standing committee (e.g., School Improvement Committee) or delegated to specific committees (e.g., a curriculum committee or school safety team might review available bullying prevention curricula prior to adoption).

### How do we communicate the policy to students, parents, and the community?

Once the schoolwide policy is established, it is key that policy be communicated effectively to all who may be affected. Some recommended avenues for communicating policies on bullying/harassment to students, parents, and the community include:

- *School board presentation.* Presentation of the new proposed policies and procedures before the school board will help ensure district support for the new measures, and provides a good venue for community outreach if covered by the local media.
- *Communication to parents and students.* PTO newsletters, fliers, letters home to parents, and articles in local papers are all means of communicating policy changes to parents.



- *School/district website.* As with any other change in policy, posting to the school and/or district website affords an opportunity for communication.
- *Consistency with other policies.* For communication to students and parents, it is important to update the Student Handbook, athletic rules, and beginning of the year information to parents to reflect changes in policy.
- *Engage student groups in promoting the new policy.* Student government councils or other clubs can be approached about promoting anti-bullying activities with their peers. A local chapter of the group Students Against Violence Everywhere (SAVE: [www.nationalsave.org](http://www.nationalsave.org)) may be particularly helpful in facilitating such efforts.

## PREVENTION STEP-BY-STEP

1. ***Know the Problem.*** Assess the level of bullying/harassment at your school by surveying and/or talking to staff and students.
2. ***Create the framework*** for prevention (policy, procedures, and schoolwide systems for reporting and responding).
3. ***Learn about bullying and/or harassment prevention programs*** that are effective.
4. ***Involve students and parents*** in the development and implementation of a schoolwide program for the prevention of bullying and harassment.
5. ***Provide training*** for all adults in the school (policy, prevention strategies, recognition of a problem and response) on both bullying and harassment.
6. ***Teach students skills*** (friendship; assertiveness; responsible witness/bystander behavior, problem solving; recognizing, refusing, and reporting).
7. ***Involve parents, students, and community members*** (awareness training, program development, communication).
8. ***Sustain efforts.*** The issues are ongoing, and since this is a change in school culture, recognize that change can take 3-5 years.

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### How important is school-wide consistency and how do we achieve it?

Behavioral educators have long emphasized the importance of consistency in communicating rules and expectations to students. Classroom rules and expectations might be said to represent the “social curriculum” of schools and classrooms. Just as the academic curriculum must be followed consistently to ensure effective instruction, messages about school or classroom behavior are most effective when students perceive a high degree of consistency between what adults say and what they do.

Professional literature and experience suggest that consistency is enhanced when 1) school staff agree to and implement a set of schoolwide expectations; 2) tolerance levels for inappropriate behavior are operationally defined; 3) follow-through is guaranteed using a set of previously communicated consequences that are predictably imposed in a fair and clear manner; and 4) there is ongoing review of, and support for, new policies and practices.

Again, revising existing school documents such as the Student Handbook, athletic rules, and beginning of the year parent information packets to include the most updated bullying and harassment policies and procedures will also help to ensure consistency.

### What are the best programs to use?

A list of bullying prevention programs is included in Appendix B. The Olweus Bullying Prevention Program is the most widely recommended of bullying prevention programs due to its inclusion in research and federal reviews of evidence-based programs, but a number of other strong evidence-based programs are also available, such as the Committee for Children’s *Steps to Respect*, and Sjostrom and Stein’s *Bullyproof*.

It is important to note, however, that any program considered for implementation should be evaluated according to its fit with local needs. Many programs have only been tested at the elementary level. Others have been implemented with relatively homogeneous school populations and may not be appropriate in a more diverse setting. Thus, in addition to evaluating whether a program is evidence-based, it is important to consider the extent to which the program addresses locally identified school needs (see Section 5 on local evaluation, below).

## 2. Improving Reporting of Bullying and Harassment

### How do we increase reporting?

One of the goals of any effective bullying prevention program should be to increase student reporting of incidents. In the particular case of bullying, there is a very real fear on the part of targets (or even witnesses) that reporting will lead them to be further victimized. A great part of the problem with student under-reporting of potentially dangerous situations, including bullying/harassment, is the “culture of silence” among students. Students who report problems involving other

students are afraid of being labeled as “snitches,” or fear retribution from students belonging to other “cliques.” The United States Secret Service, in its report on school shootings, reported that, of 37 school shooting incidents taking place between 1974 and 2000, at least one student knew of the intentions of the shooter in advance in over three-quarters of the incidents; yet in only two cases was an adult informed. Given the high percentage of school shooting incidents that involved a revenge motive for perceived bullying or harassment, these figures are very directly relevant.

To increase reporting of bullying or harassment, it is worthwhile to consider under what situations students might be expected to report and what conditions might preclude them from reporting. A number of specific strategies should be considered to encourage the reporting of bullying and harassment:

- *Define bullying and harassment clearly for all students, staff and parents.* Definitions of bullying, harassment, sexual harassment, and hazing should be widely disseminated as above. Providing examples of each may help students and staff come to an understanding of when a reportable incident has taken place.
- *Emphasize the critical importance of reporting.* Reporting should be addressed directly as part of the school conference day/classroom discussions described above. The “culture of silence” can be addressed by sharing figures (as appropriate to grade level) regarding the relationship of bullying to previous school shootings, with the goal of getting students to consider whether avoiding being labeled a “snitch” is worth a life. As SuEllen Fried notes: in the videotape *Changing Perspectives: Paving the Path to Bully-free Schools*, “Tattling is when you tell to get someone in trouble; reporting is when you tell to get someone out of trouble.”
- *Ensure the safety of reporters.* As noted below, students will report incidents of bullying and harassment only to the extent that they feel safe doing so. School staff should work with students to develop reporting methods that are perceived as safe *by students*.
- *Respond quickly and consistently to all incidents* to make it clear that bullying/harassment will not be tolerated. Students surveyed about bullying and harassment typically believe that no action will be taken in response to a report. Thus, a key part of successfully increasing student reports of bullying and harassment is to provide assurance to students that “something will be done” in response. Ensuring follow-through provides students and staff with the assurance that practice is consistent with school policy. Student reporting will likely increase in direct proportion to the confidence that timely and fair action will be taken.

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### How Do We Know When A Student is Being Bullied?

The student may:

- have problems with absenteeism (be fearful of attending school; and want to stay home from school);
- have clothes or belongings (books, money, etc.) that are damaged or missing;
- choose a round-about or strange route to and from school or avoid taking the school bus;
- have unexplained injuries;
- engage in abusive behavior (physical or verbal) toward other children, siblings, family pet;
- have dropping grades, lose interest in school work;
- make excessive trips to the school nurse;
- exhibit a loss of appetite;
- be fatigued or have trouble sleeping;
- complain of headaches and stomach aches, especially in the morning;
- show subtle changes in mood (withdrawn, anxious, preoccupied);
- be socially withdrawn;
- be depressed;
- talk about or attempt suicide.

**NOTE:** These signs are not intended as conclusive signs that a student is being bullied or harassed. If these signs are seen in sufficient combination or intensity for a student, they may indicate that it would be wise for a trusted adult to begin a conversation with that student to explore the problem.

## **How do we best protect the reporter's safety?**

Even the most sophisticated bullying and harassment policy may not guarantee increased reporting on the part of students if they do not feel that they can make reports safely. It is extremely important that reporting policies include provisions that attempt to assure reporters that their safety will not be further jeopardized as a result of their report. Towards that end, retaliation for any previous incident (whether it be bullying, harassment, hazing, or sexual harassment) should be considered a separate and new incident of harassment and should be reported and treated as such. Policy may also include the provision of more severe consequences for proven retaliation.

In addition, it is highly recommended that students be consulted in the formulation of reporting guidelines, since students must ultimately come to feel that reporting guidelines protect their safety. In formulating school policy on reporting, school personnel should find a means of gaining student feedback (e.g., interviewing student leaders, student survey) on some of the logistics of reporting—such as the form on which the complaint is made, where the forms are kept, how available the forms are, who the report is made to, and what the format of the investigation will be. If students have input into and understanding of reporting policies, they will be more likely to believe that it is in their best interest to report incidents of bullying and harassment.

## **How is a complaint filed?**

Specific suggested procedures and forms for filing a complaint may be found in Section III. School personnel should recognize that the experience of bullying and harassment is often an emotional one for the target, and thus reports may be accompanied by a display of emotion. The most effective stance for the individual to whom a report is filed to take is one that is in line with district policy: that bullying and harassment will not be tolerated at this school, that we will investigate this complaint fully and fairly, and that we will take whatever action is appropriate to see that all intimidating behaviors are brought to an end.

## **Who should report?**

Local policy should seek to go beyond reporting by the target to encourage reporting by witnesses, including both students and school staff. Rates of reporting of bullying and harassment are typically low for students and only slightly higher for staff. It is important that local policy make it clear that both students and school staff are expected to report all incidents of bullying, harassment, sexual harassment, or hazing of which they are aware. Where it is possible for school staff to intervene in and effectively resolve incidents of bullying immediately, without resorting to a formal complaint process, they should be encouraged to do so. The incident should still be reported to school administration, however, for purposes of monitoring the extent of the problem, and to ensure that such informal solutions have resolved the problem and are consistent with district and school policy.

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### How much notice is enough?

In many of the most adversarial cases involving bullying and harassment, parents report that they have tried to call attention to incidents many times without action having been taken. Multiple reports that are met with inaction *will* create the sense among parents and students that the school is not serious about dealing with bullying and harassment, regardless of whether school staff consider that to be the case.

Whatever the school policy on bullying and harassment, it should be enacted and enforced consistently *from the initial report*. Students learn as much from what adults do as from what they say. Responding only after a number of reports sends a message to students that there is some level of bullying and harassment that is tolerated or even accepted. Investigation should begin upon receipt of the initial complaint of bullying or harassment.

### How do we best ensure that action will be taken?

Effective policies depend on a cycle of clear policies developed in collaboration with the entire school community, effective and visible dissemination of those policies, and clear enforcement. The likelihood of follow-through or compliance with school or district policy is increased by ensuring both staff, students, and parents have a say in the development of those policies. Disseminating those policies as widely as possible through the multiple channels suggested above encourages an atmosphere of mutual accountability and responsibility in helping carry out those policies. If there are situations in which bullying and harassment were not reported or acted upon in accord with policy, administrative leadership in creating necessary changes in policy and practice can send a message that the school hopes for continuous improvement with respect to bullying and harassment. Finally, collecting and reviewing data on incidents of bullying and harassment can be expected to increase follow-through over time (see below).

## 3. Investigation

### What general guidelines should be followed in investigating reports of bullying, harassment, hazing, or sexual harassment?

The purpose of investigation of any complaint filed for bullying or harassment is to determine whether the incident reported meets the criteria for harassment, bullying, hazing, or sexual harassment set forth in the State Sample Policy or local adopted policy. These criteria should be consulted carefully and if the actions or behaviors of students or school staff meet these criteria, the behavior constitutes bullying or harassment, and appropriate action should be taken. Definitions drawn from the professional and legal literature of bullying, harassment, sexual harassment, and hazing, are included in Appendix A. Although these definitions are not a part of the Iowa Sample Policy, consulting these definitions may provide additional guidance in understanding the nature and form of these problems.

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Using existing harassment investigation procedures and roles may help keep the requirements of compliance manageable. It should be possible, for example, to have a single set of investigation procedures (with some variation) regarding complaints of bullying, harassment, sexual harassment, or hazing. If there is a local equity coordinator who is well trained, he or she would be well qualified to conduct such investigations in a thorough and timely manner.

Specific procedural guidelines and forms for investigation may be found in Section III. In addition, specific guidance as to *racial or sexual harassment* is provided in memoranda and pamphlets from the United States Department of Education Office for Civil Rights and the Iowa Civil Rights Commission, reprinted in Appendix C.

### **How soon should an investigation begin, and how quickly should it proceed?**

Once a school has received notice of possible harassment, bullying, hazing, or sexual harassment, it should begin an investigation as soon as possible to determine what occurred, and take such steps as could be expected to end the harassment or bullying and prevent it from happening again. These steps are the school's responsibility regardless of who filed the report, or whether it was filed formally or informally.

Guidance from the USDOE Office for Civil Rights (OCR) regarding the timing of investigation of sexual harassment can be equally applied to all complaints regarding harassment or bullying:

"The school must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. However, in all cases the inquiry must be prompt, thorough, and impartial."

### **Who should be interviewed during the investigation?**

Statements should be taken from the alleged target and alleged perpetrator (see specific guidance in Section III). These statements should be obtained separately, and all possible precautions taken to safeguard the safety of the student(s) making the report. If there are multiple students alleged to be engaged in the harassment, they should be interviewed in rapid succession, in order to prevent time to assemble a consistent story among perpetrators.

If witnesses to the incident can be identified, all witnesses should be interviewed, especially if there are significant discrepancies between the reports of the alleged target and harasser (see below). If the target has described the incident or incidents to others, those individuals should be interviewed as well regarding the details of how the incident was described to them, and the effects it seems to have had on the target.



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### How should interviews be framed?

All interviews, regardless of whether they are with alleged targets, alleged harassers, witnesses, or parents should be carefully framed in terms of district policy. Local board policy regarding bullying and harassment should be carefully explained, as well as the form and purpose of the investigation procedure. The complainant (and the complainant's parents if interviewed) should be assured that the investigation will be handled discreetly, but it should also be made clear that it will be necessary to speak to witnesses and that absolute confidentiality cannot be guaranteed. The investigator should clarify that he or she is a neutral investigator, not an advocate for either side. It should be emphasized to the complainant, and the complainant's parents if interviewed, that board policy forbids any type of retaliation, and the investigator should encourage immediate reports if any retaliatory behaviors occur.

The complainant should be encouraged to put the complaint in writing (sample forms are provided in Section III). Teacher assistance should be made immediately available for any student with difficulty in writing.

Further guidance on gaining specifics from interviewees during the investigation may be found in Section III, Harassment Investigation Procedures.

### If there are discrepancies in the content of various reports, how can the investigator reconcile different stories?

If a disagreement exists between the target and alleged perpetrator of bullying or harassment about whether the incident occurred, or about the exact nature of the incident, the following types of information (adapted from OCR Sexual Harassment Guidance 1997 — [www.ed.gov/about/offices/list/ocr/docs/sexhar01.html](http://www.ed.gov/about/offices/list/ocr/docs/sexhar01.html)) may prove helpful in resolving discrepancies:

- Statements by any witnesses regarding the incident should be examined and compared with the statements of the complainant and alleged harasser.
- Evidence about the relative credibility of the alleged target and bully/harasser should be a factor in the investigator's decision. The level of detail and consistency of each person's account(s) should be compared with other witnesses to gain a sense of credibility.
- Evidence regarding the students' behavior after the incident should be considered if available. Are there other students who saw the student visibly upset (or not) after the incident? (Note that the absence of such corroborating information does not necessarily invalidate the report.) Has the alleged harasser bragged to others about the incident or made demeaning statements about the target to others? Finally, have there been significant behavioral changes on the part of the student reporting that may be evidence of a delayed reaction to the incident, such as difficulty in concentrating on academic work, increased absences, symptoms of depression, or avoiding certain individuals or places at school?
- Other contemporaneous evidence: The target of the harassment may have talked after the incident to other students, even if they were not witnesses to the event. The complainant should be asked whether they discussed this



incident with other students, parents, siblings, or with any school staff. If so, those individuals may be interviewed regarding the extent to which the details described to them were consistent with the details described by the student to the investigator.

### **How much should parents be involved during the investigation phase?**

Parents should be kept apprised of all phases of the investigation. Parents whose children have been the targets of bullying or harassment are understandably anxious to ensure that the issue is resolved. Given the passion that some parents bring to the situation in defense of their son or daughter, it might be seen as a “natural reaction” on the part of administrators to keep parents at a distance during investigation and resolution, so as to avoid biasing the process. Yet it is important to understand that a lack of communication between the school and parents may only exacerbate tensions, and decrease the chances that parents will support the outcomes of the procedures.

Parents often feel shut out of the bullying/harassment investigation process; the resulting feelings of lack of control are likely to increase the possibility of an adversarial relationship between parents and school. As difficult as it may be to involve the parents of both the bully and the target, communicating with parents will give them more ownership of process, and decrease the likelihood of discontent with the ultimate outcome of the process. If the investigation takes longer than originally planned, it is wise to keep all parties apprised that the investigation is still ongoing.

If it is possible, a joint meeting involving both the parents of the alleged bully and target can be arranged. Such a meeting may increase the chances of cooperation between the parents, and increase the chances that a consistent message can be sent from both homes and the school. If on the other hand, there is reason to suspect that there is prior hostility between the parents, or that a joint meeting between parents of the target and alleged harasser would be unproductive, separate meetings should be held. In any case where a high degree of volatility might be expected in a meeting with parents, it is advisable to involve a mental health professional in the meeting.

## **4. Responses and Consequences for Bullying and Harassment**

### **What options are available for addressing bullying once it occurs?**

A wide range of options is available for addressing bullying that is already occurring. Some of these options are presented below, rank ordered by severity/intrusiveness. For further options see the resources list in Appendix A or the web resources included below:

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**Address Peer Culture:** Use schoolwide programs to create a peer culture that discourages rather than encourages bullying/harassment. See:

Gibbs, J.C. et al. (1996). From harassment to helping with antisocial youth: The EQUIP program. *Reclaiming Children and Youth: Journal of Emotional and Behavioral Problems*, vol. 5 (1), pp. 40-46.

Committee for Children Website: [www.cfchildren.org/articlef/murphyf/murphy\\_print](http://www.cfchildren.org/articlef/murphyf/murphy_print) Northwest Educational Regional Laboratory, *Schoolwide Prevention of Bullying*: [www.nwrel.org/request/dec01/](http://www.nwrel.org/request/dec01/)

**Increased Monitoring and Enforcement of Rules:** Incidents of bullying and harassment can help investigators, or the school bullying prevention team, evaluate the quality of current violence prevention efforts. Thus, incidents on the playground or in the hallways may be a sign that increased adult monitoring and perhaps additional staff training is needed to address bullying in those locations. Additionally, increased enforcement of rules in specific locations or specific situations in response to incidents of bullying sends a message to students and parents that the school and district are serious about curbing bullying and harassment.

**Talking to the Bully:** As part of a continuum of responses, a conversation with and/or reprimand to the bully may in some cases be sufficient to deter bullying behavior. This approach is most likely to be successful if a) the bullying is not severe or extensive over time and b) there are schoolwide policies in place that clearly define bullying, so that the student is forced to confront the fact that his or her behavior is indeed an example of bullying.

Discussion-based intervention with the bully should *not* be used if a) there is a potential that the bully will seek retribution against the target as a result of the conversation, b) where there is a violation of the criminal or juvenile law, or c) if the bullying/harassment is severe or extended. Discussions with the bully should include a clear statement of district harassment/bullying policy, and make it clear that other consequences are available and will be pursued if the bullying continues.

**Teen Court:** Teen Court is a program in which a student is judged by a jury of his or her peers. One of the goals of Teen Court in the Schools is to replace punitive sentences (i.e., out-of-school suspension, in-school suspension, or detention) with positive or constructive sentences. This emphasis on the use of constructive sentences is more beneficial in changing the student's behavior.

For an example see Pima County Teen Court website at [www.pcteencourt.com/tcis/index.htm](http://www.pcteencourt.com/tcis/index.htm)

See also:

Wheeler, J. (1995, Spring). Teen courts in school: Teaching responsibility, justice, and authority. *Update on Law-Related Education*, 19(2), 36-39.

**Family Counseling:** In some cases, administrators may find that bullying is encouraged, rewarded, or modeled in the bully's family. In such a case, family counseling may be valuable in encouraging the family to re-evaluate their assumptions regarding their son's or daughter's school behavior.

**Restorative Justice:** Restorative justice is a systematic response to wrongdoing that emphasizes healing the wounds of targets, offenders and communities caused

or revealed by the aggressive behavior. For examples of restorative justice applied to bullying or other school issues see [www.restorativejustice.org/rj3/Feature/2003/October/RJSchools1.htm](http://www.restorativejustice.org/rj3/Feature/2003/October/RJSchools1.htm)

**In-School Suspension/Detention:** In-school suspension is a school program to which students are assigned for some period of time in response to a defined behavior. For a description of components of effective inschool suspension programs see:

Morris, R. C. & Howard, A. C. (2003, Jan-Feb) Designing an effective in-school suspension program. *Clearing House*, v. 76, n. 3, pp. 156-159.

**Suspension:** School removal for 10 days or less as determined by school administration (see discussion below).

**Long-Term Suspension or Expulsion:** School removal of 10 days or more (see discussion below).

**Involvement of Local Juvenile Justice Systems:** Effective administrators prefer to handle as much student behavior as possible within the school disciplinary code, in order to avoid criminalizing student behavior in school. On the other hand, incidents that involve criminal violation should clearly be referred to the criminal or juvenile justice system. Towards that end, prior consultation with local law enforcement officials is recommended to determine the types of bullying/harassment incidents that would be appropriate for referral to law enforcement, and the procedures to be followed in such a case.

## Should we use suspension and expulsion as a consequence for bullying/harassment?

Suspension, expulsion, and even referral to the court system are options that are included within the continuum described above and are available if needed. But for a variety of reasons, the use of suspension and expulsion for deterring bullying and harassment should be used judiciously as the end point of a continuum, not as the default response.

*No Child Left Behind* mandates that schools use only those educational interventions that are evidence-based. The central assumption of zero tolerance—that removing students from school for both major and minor misbehavior will have a deterrent effect on other students—simply has not been supported by the evidence. Punitive approaches sometimes seem an attractive short-term solution, by removing the perpetrator from the school for some period of time. Yet, such approaches do not teach students the skills they need to avoid such troubles in the future and, by placing at-risk students in unsupervised situations, may exacerbate behavioral problems. Indeed, the evidence suggests that higher rates of suspension and expulsion are associated with higher dropout rates, minority disproportionality, less satisfactory school climate, and lower rates of academic achievement (see Skiba, R. & Knesting, K. (2001). *Zero Tolerance, Zero Evidence*. [www.indiana.edu/~safeschl/publication.html](http://www.indiana.edu/~safeschl/publication.html); see also the *Children Left Behind Project* at [ceep.indiana.edu/ChildrenLeftBehind](http://ceep.indiana.edu/ChildrenLeftBehind)).

In response, many schools and school districts are beginning to adopt an approach in which disciplinary responses are scaled in proportion to the seriousness of the offense. Certainly there will be some instances of bullying or harassment that pose a threat to safety, and in such cases schools must retain the

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right to apply whatever sanctions are necessary to maintain safety. Even in these cases, however, the ineffectiveness of out-of-school suspension in creating behavioral change should be borne in mind—students placed out of school without supervision are only falling farther behind academically and face increased risks for joining other antisocial youth in the community. Thus, when suspension or expulsion must be used due to considerations of safety, provisions (e.g., in-school suspension, alternative placement) should be considered to maintain a student's connection to academic work. Supplementary interventions should also be considered for addressing the social or learning problems that are causing the aggressive behavior (e.g., functional assessment).

### **Should both the bully and the target be punished when bullying or harassment is confirmed?**

**Most emphatically not.** Some administrators treat bullying or harassment as an example of fighting, and believe, therefore, that both the bully and the target should receive a consequence. However, this view ignores several important features that characterize bullying and harassment.

First, the effects of bullying on the perpetrators and the targets of harassment are not equal. While there are long term effects for both bullies and targets, the risks of negative effects of bullying and harassment on the target are far greater.

More importantly, punishing the target along with the perpetrator sends a clear message to targets that they are responsible for their own misfortune, or that they are somehow to blame for being bullied. The notion that targets of bullying are somehow at fault for their victimization is a myth that may well support a climate conducive to bullying and harassment. In the same way that we do not assign consequences to the victims of crime in the adult system, there is no reason for punishing targets of confirmed bullying or harassment.

It is true that targets of bullying may be individuals who have shown themselves to be less capable of self-defense, or who may react more strongly to being picked on. These characteristics may indeed have encouraged those engaging in the bullying to select this individual. *But the fundamental issue to be resolved when bullying and harassment occur is reduction or elimination of the bullying and harassment, not the interpersonal characteristics of the target.*

It is not impossible that bullying, if left unaddressed, will escalate into fighting if the target, having failed to report, finally reaches a point of striking back. In such a case, school rules regarding fighting apply. Again, however, disciplinarians may wish to consider the context of the fight, and determine whether co-equal consequences are sensible, given the long-term harassment that the target may have suffered. The issue of fighting may also provide an additional opportunity to emphasize the importance of reporting by students. Targets of bullying who report any and all incidents of bullying/harassment immediately will be less likely to reach a point where they impulsively strike back and then face consequences for fighting.

If school personnel believe that an incident or incidents of bullying may be due in part to a lack of assertiveness on the part of the target, an appropriate response might be to arrange conversations for that individual with a mental health professional (school psychologist, counselor, or school social worker) with the

goal of teaching that student more appropriate assertiveness skills. Such a referral should take place independently of consequences to the perpetrators of bullying and harassment, and should never replace consequences meant to enforce bullying and harassment policies.

### **How much should parents be involved in resolving incidents of bullying?**

To the maximum extent allowable under federal privacy laws, parents should be involved in all phases of bullying prevention, investigation, and resolution. Parents who have been involved in helping formulate policy, and have had the opportunity to be exposed to and understand policy, are more likely to understand and support actions taken in response to bullying and harassment. Federal privacy laws prevent administrators from informing the parents of the target about the specific consequences meted out to the perpetrator. Yet, parents whose children have been involved in incidents of bullying or harassment are more likely to be supportive of the resolution if they are informed at each step of the procedure about district policy, the nature of the incident, the steps being taken to investigate the incident, and the response options being considered in line with district policy. In any investigation, parents should be brought in proactively as early in the process as possible. Parent involvement throughout the process will increase the likelihood that parents will support the proposed resolution. The most effective intervention will involve and inform parents, students and staff.

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### Working with Parents Step-by-Step

Parents may initiate contact with the school when they are concerned that their child is being bullied/harassed. Receive and listen receptively to any parent or student who reports bullying. If a parent contacts the school to report an incident of bullying, elicit information from that parent concerning what happened, where and when it happened, and who s/he thinks is involved, or give them a form to fill out with their child.

When a problem is first reported at school, inform the parents of the alleged bully and the target as soon after an incident as is possible (preferably the same day) to apprise them of the situation. In either situation, set up a meeting with the parents of the target and of the bully/harasser as soon as possible.

#### At the meeting:

- *Communicate* that protecting the students is your primary concern.
- *Inform the parents about the school's anti-bullying policy* (including prevention programs that may be in place). Point out that parents helped develop that policy, and the school intends to implement the policy for the good of all.
- *Share your concern for the target.* Point out how the bully/harasser's behavior is contributing to the situation.
- *Identify what the parents want the school to do* to ensure that their child is safe from bullying/harassment.
- *Brainstorm potential remedies* with the parent(s).
- *Apprise the parents of the possible options* available in developing a plan of action, and elicit their input on those options if they offer it. Note that, under federal privacy laws, the parents of the target cannot be informed of specific consequences meted out to the alleged harasser.
- *If at all possible, provide the parents with an approximate timeline* for investigation. If the investigation takes longer than expected, contact the parents to keep them informed that the investigation is still proceeding.

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- **Ask school staff to more closely monitor the behavior of the alleged bully/harasser to ensure the safety of the target by striving to keep them apart during unsupervised times.**
- **Deliver appropriate and effective consequences to the bully/harasser.**
- **If removal is necessary, the bully and not the target should be the one removed. Consequences for the bully/harasser will set a tone for all students in the school with regard to future situations.**
- **Explain to the parent(s) the steps that the school is taking to prevent bullying/harassment.**

**Remember that while it may not always be possible to give parents exactly what they want after an incident of bullying, it is always possible to *treat all parents with respect and continue ongoing communication with them.***

## 5. How Do We Know It's Working? Evaluating Local Efforts

### Why is it necessary to evaluate local efforts?

*No Child Left Behind* requires that schools use only evidence-based procedures in school-based intervention. While some bullying programs (e.g., the Olweus Bullying Prevention Program) have extensive documentation that establishes them as evidence-based, not all of these programs are applicable in local situations. Fewer programs are available at the secondary level, for example. Thus it is incumbent upon schools to collect data on the effect of local bullying prevention efforts, to ensure that those efforts are indeed making a difference.

Data collection provides protection to local educators in a number of ways. Data on the number of reported incidents, their successful resolution, and any decrease in bullying/harassment over time provides information to parents and the community that the school is serious about dealing with the issue. Such data may

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help persuade parents of future targets that the school can be trusted to deal with the issue in a fair and effective manner. In addition, school data on numbers of reported incidents and successful resolutions can be shared with the community, school board, and local media in the event of complaints (or lawsuits) about school policy, and to ensure continued support for bullying and harassment policies and practices.

### **What types of data can be used to establish the need for bullying prevention?**

As noted, most bullying prevention programs contain a student survey providing information on the extent and types of bullying. These data are useful for establishing a rationale for local bullying prevention activities, and for providing a baseline against which prevention efforts can be compared.

Beginning with the 2005 administration of the Iowa Youth Survey (IYS), information will be gathered on the percent of students at grades 6, 8, and 11 in a school district who have been targets of a wide variety of bullying/harassment behaviors. The survey will also provide information on students' perception of how school staff respond when a bullying/harassment incident is reported. The IYS information can give a district a snapshot of the extent of the problem and guide district personnel to further investigation of the nature and extent of bullying and harassment in their schools.

### **What types of data can be used to monitor the effectiveness of bullying prevention efforts?**

Continuing data should be collected on the number and type of incidents reported and their resolution. In addition, school disciplinary data regarding fights, verbal aggression or other interpersonal disputes can be monitored to assess whether bullying/harassment policies have had an effect on those behaviors. Given that many students avoid some portion of the school day due to fear of bullying or harassment, schools may even notice an improvement in attendance or achievement as a result of the new policies. Sharing such data with students, parents, and the community can help encourage support for bullying and harassment policies.



# Section III:

## Harassment Investigation Procedures

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# SECTION III: Harassment Investigation Procedures

## Student-to-Student Harassment Investigation Procedures

Students who feel that they have been bullied or harassed should: tell a teacher, counselor or principal. That individual should refer the student to the school's designated investigator who will take a statement from the student and assist the student to write down exactly what happened, keep a copy, and give another copy to the teacher, counselor, or principal including:

- what, when and where it happened;
- who was involved;
- exactly what was said or what the student(s) responsible did;
- witnesses to the harassment;
- what the student said or did, either at the time or later;
- how the student felt;
- whether the student told anyone else about the incident after the incident occurred; and
- how the student(s) responsible responded.

In addition to other policies and procedures, under the State Sample Policy, it may be possible to encourage students to take responsibility for communicating directly to the alleged bully. Such an approach may assist students in improving their own conflict resolution skills. If the student is comfortable doing so, the student may communicate to the student(s) responsible that the student expects the behavior to stop. If the student wants assistance communicating with the student(s) responsible, the student may ask a teacher, counselor or principal to help.

**(NOTE:** Due to the typical power differential between bullies and targets, there will be many situations in which a student does not feel comfortable directly confronting his or her harasser(s), or believes that such direct action will only aggravate the situation. Thus, students should never be forced to confront the alleged harasser(s). Nor does encouraging students to directly resolve issues replace the school's responsibility to investigate and resolve all reported incidents of bullying and harassment.)

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### Complaint Procedures

A student who believes that he or she has been bullied, hazed, or harassed should notify any teacher or school administrator who shall inform the harassment investigator. The investigator may request that the student complete the Harassment/Bullying/Hazing Complaint form and turn over evidence of the harassment, including, but not limited to, letters, tapes, or pictures. Information received during the investigation is kept confidential to the extent possible.

The investigator, with the approval of the principal, or the principal, has the authority to initiate a harassment investigation in the absence of a written complaint.

### Investigation Procedures

The investigator will reasonably and promptly investigate upon receipt of the complaint. The investigator will interview the complainant, any witnesses, and any student(s) allegedly responsible. The student(s) allegedly responsible may file a written statement refuting or explaining the behavior outlined in the complaint.

Upon completion of the investigation, the investigator will make written findings and conclusions as to each allegation of bullying, harassment, or hazing and report the findings and conclusions to the principal. The investigator will provide a copy of the findings of the investigation to the principal.

### Resolution of the Complaint

Following receipt of the investigator's report, the principal may investigate further, if deemed necessary. Regardless of whether additional investigation is undertaken, the principal shall make a determination of any appropriate discipline, up to and including suspension and expulsion.

The principal will file a written report closing the case and documenting any disciplinary or other action taken in response to the complaint. The complainant, the student(s) allegedly responsible, and the investigator will receive notice as to the conclusion of the investigation, and any student found to be responsible will receive notice of the disciplinary consequences.

### Points to Remember in the Investigation

- Complaints must be taken seriously and investigated.
- Evidence uncovered in the investigation is confidential to the extent possible.
- No retaliation will be taken against individuals involved in the investigation process. Individuals found to have retaliated against an individual involved in the investigation process will be disciplined, according to the same schedule of consequences available for original acts of bullying/harassment up to and including suspension and expulsion.

- Individuals may be disciplined for filing false complaints or knowingly providing false information during the investigation process.

## **Conflicts**

An alternate investigator shall investigate if the investigator is:

- a witness to the incident;
- related to the accuser, the accused or any witnesses;
- is the accused; or
- has any other conflict of interest.

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### Before There's A Problem: Being Prepared

### At the Time of an Incident: Investigating A Report of Bullying/ Harassment

## Investigation of Bullying/Harassment Complaints Step-by-Step

- Have a **board policy** in place that defines harassment, identifies to whom a complaint should be made, and defines the complaint procedure.
- Disseminate copies of the policy to staff, students, and parents.
- Provide staff and students with training regarding the policy, the role of the coordinator and the complaint process.
- Communicate to students that they should feel comfortable making a report to any adult whether they are targets of bullying/harassment/hazing or witnesses of it.
- Ensure that all adults in the school are prepared to receive and respond to student complaints of bullying/harassment/hazing and that they know the procedures for how and when to report the complaint to the individual responsible for investigating the complaint. Resolving a complaint at the lowest level is the best course of action.
- Authorize one or more staff members to serve as investigators. This may be done at the rate of one investigator per building or one investigator for several buildings. Ensure that anyone serving as an investigator is trained in investigation procedures. Suggested staff who may fulfill the investigator role are principals, assistant principals, equity coordinators, at-risk coordinators, or related services personnel. Counselors may fulfill this role, but caution is suggested so that the individual's role as counselor is not compromised.

*Upon receipt of a complaint, begin the investigation as soon as possible.*

#### A. Interview the target of bullying/harassment/hazing.

1. Explain the district's policy on bullying, harassment, and hazing and the complaint process.
2. Assure the complainant that the investigation will be handled discreetly, but explain that it will be necessary to speak to witnesses and that absolute confidentiality cannot be guaranteed.
3. Describe yourself as a neutral investigator. You are not an advocate for either side.
4. Assure the complainant of nonretaliation and encourage the complainant to inform you if retaliatory behaviors occur. "I can't promise that retaliation won't happen, but I will assure you that we will respond to it if it does."
5. Ask the complainant to place the complaint in writing, preferably using a form for that purpose.

*Note: Should the student have a disability or be in an emotional state that impairs his/her ability to put thoughts in writing, interview the student orally and make sure that someone takes notes during the interview.*

6. Obtain and record in writing the specific details of the alleged incident. Conclusions, such as “She harassed me” or “He’s a sexist,” are insufficient.
  - a. Obtain the place, time, date, witnesses’ names, and documentary evidence of each allegation.
  - b. Make sure you understand the chronology and context of the various allegations.
  - c. Ask for a description of verbal comments in as close to verbatim form as possible.
  - d. Request a detailed description of the physical contacts or actions of the alleged bully/harasser.
  - e. Gain an understanding of the relationship between the involved parties before, during, and after the alleged incident.
  - f. Ask the complainant for his/her specific reactions to each alleged incident. Was the behavior unwelcome? In what way? Be specific.
  - g. Inquire as to whether there has been any perceived retaliation.
  - h. What was the internal reaction expressed by the complainant? Anger? Fear? Embarrassment? Physical illness? Emotional upset? Interference with school performance or academic pursuits/activities? (See “Helpful Hints” on the next page for interviewing suggestions.)
  - i. How would the complainant like to see the matter resolved? (The complainant should be informed that s/he may not dictate results; however, it may be helpful to know what the target would consider to be a satisfactory resolution.)
7. Have the complainant review and sign the written record of the interview.
8. Obtain a complete list of witnesses and documentary evidence as well as a list of others with whom the complainant has discussed the alleged incident.
9. Ask the complainant not to discuss the incident with others during the course of the investigation.
10. Conclude the interview by informing the complainant: a) of the approximate length of time that the investigation will take; b) that it may be necessary to visit with him/her again regarding specific allegations and c) that you will meet with him/her at the conclusion of the investigation to discuss your conclusion and the action to be taken.

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- Consider whether it is necessary to take precautionary safety measures pending the outcome of the investigation (e.g., suspension, temporary transfer, or other provisions to ensure no or limited contact).
- Review the district policy. Do the allegations, if found to be true, meet the definition of bullying/harassment/hazing? If so, proceed; if not, it is not necessary to go forward.

### B. *Interview Witnesses*

1. Explain the reason for the interview and explain the complaint process.
2. Assure the witness that the investigation will be handled discreetly, but absolute confidentiality cannot be guaranteed.
3. Review each allegation and record specific responses from each witness. (Again be sure to get specifics such as time, place, date, and other witnesses)
4. Remind the witnesses of the retaliation policy.

### C. *Interview the Alleged Bully/Harasser*

1. Present a brief description of the nature of the meeting and explain that the purpose of the interview is to investigate a complaint made against him/her. Explain that:
  - a. the school takes all allegations of harassment very seriously;
  - b. you are a neutral investigator and that no decision has been made as to the validity of the allegations;
  - c. one purpose of the interview is to allow the alleged bully/harasser to respond;
  - d. the investigation will be handled discreetly, but it will be necessary to talk to witnesses; and
  - e. absolute confidentiality cannot be guaranteed.
2. Provide the identity of the complainant and the specific nature of the alleged harassment.
3. Give the individual an opportunity to respond to the allegations.
4. Ask the bully/harasser to identify anyone who might have been a witness to the alleged incidents and who might corroborate his/her statement.
5. Create written notes of the interview and have the alleged harasser sign it.
6. Ask the alleged harasser not to discuss the complaint during the investigation.
7. Conclude the interview by informing the bully/harasser: a) of the approximate length of time that the investigation will take; b) that it may be necessary to visit with him/her again regarding specific



allegations and c) that you will meet with him/her at the conclusion of the investigation to discuss your conclusion and the action to be taken.

8. Remind the alleged bully/harasser of the retaliation policy.

A. *Analyze results of the interviews.*

1. Review your notes from all the interviews. Identify areas of agreement and areas of disagreement in the statements of the complainant and the alleged harasser.
2. List the undisputed facts as well as those facts which are disputed.
3. Study the disputed facts. Check for inconsistencies in each party's statements. Consider witnesses' statements and all other supporting evidence.
4. Review the records of the complainant and the alleged harasser (where it is legal to do so) to assess any evidence that might undermine the credibility of either party.
5. Determine whether it is necessary to re-interview any individuals.
6. Taking all the available information into account, make a determination with respect to each allegation as to whether it is more likely to be true or false.
7. Consider only those allegations you determine to most likely be true, and make a decision as to whether they fall within the definition of harassment as determined by the district's policy or the law.

B. *Determine what action, if any, should be taken.*

1. Review district policies to determine what action is available.
2. Treat the alleged bully/harasser similarly to others that have engaged in similar behaviors.
3. Meet with the alleged harasser and inform him/her of the actions, if any, to be taken.
4. If the investigation does not yield clear findings in either direction, advise the alleged harasser that the alleged conduct, if true, would constitute harassment and that the situation will be monitored to guard against any future such behavior.
5. Meet with the complainant. Inform him/her of the conclusion of the investigation and that action has been taken in accordance with district policy.
6. If there is not enough evidence to clearly find harassment in this instance, all parties should be notified that there will be ongoing monitoring to guard against any future incidents of such behavior.

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#### After the Interviews: What's Next?

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### Harassment Investigation Procedures: Helpful Hints

1. While avoiding “leading” the student, the investigator may help a student complete the form and/or record the statements of a student who needs such assistance.
2. If a student or adult didn’t see an incident, that student or adult can still be a “witness” (“ear witness” or “confidant witness”) for purposes of the investigation. However, the investigator must determine the source of the person’s information if the person was not an eyewitness.
3. It is highly unusual that a target’s and witnesses’ versions of events are identical. Identical statements may be an indication that the students have “gotten their stories straight,” and that more investigation is needed.
4. Differences in witnesses’ recollections are expected. Four persons can sincerely believe four different versions of an event they all witnessed simultaneously. In other words, a person’s perception is that person’s reality. The truth may reside in one version, but is more likely to be found in a synthesized set of facts. Such differences are why conducting investigations is a challenging job, but they are not typically evidence of bad faith or “false” statements.
5. Practice saying, “And then what happened?” to get into the habit of letting students tell the story rather than answering your leading questions. One type of “leading question” is one that assumes certain facts. “Did you see Billy teasing Samantha?” is a leading question. It assumes Billy was teasing Samantha, not just talking to her, and that Samantha was not teasing Billy. A better approach is to ask the witness if she/he saw Billy and Samantha together and then ask the student to describe what she/he saw and heard, including what the student *thought* was happening.

Bear in mind that nonverbal cues represent 80% or more of communication. Posture, tone, and loudness of voice, placement of hands, positioning of the individuals vis-a-vis each other, and many other non-verbal signals convey a message. This can be especially true in instances of intimidation. It’s not just about the words. Make notes about the non-verbal signals.

6. Under normal circumstances you should not interview more than one student at a time. Because of the disparity in power that often characterizes bullying situations, it is not wise to interview the alleged bully/harasser and target of the behavior together.
7. Until it becomes second-nature, read and re-read the school’s board policies and procedures prior to investigating harassment, bullying or hazing, to make sure you’ve complied with the board’s directives.
8. It is possible that students will file or participate in a complaint in bad faith. If you are convinced that a student did so (e.g., completely

fabricated the story to get someone in trouble), it is appropriate to discipline that student. Evidence of bad faith may include the following:

- A later admission of making up the story.
- Stories that belie the facts (for example, the complainant or bully/harasser was in class at the time the alleged incident occurred).

Get in the habit of contacting the parent of the target in your office with the student present after an incident has been reported to you. It is not required by law, but it shows the parent that you are concerned about their child, and lets the parent hear the details as you have been told them.

9. It is possible that an accused student (or his/her friends) will retaliate against either the target or witnesses. The investigator shall remind every student interviewed that retaliation is also an act of bullying or harassment, and is prohibited. The investigator should follow up periodically with the students involved to check for acts of retaliation, and reported acts of retaliation should be investigated immediately.
10. *Reminder:* Student and employee discipline records are confidential records. Even though parents may believe they have a “right to know” disciplinary results administered to others, the law prohibits you from sharing this information.
11. Inform the target and accused student approximately how long the investigation will take.
12. Ask all persons interviewed not to discuss the complaint while the investigation is on-going.
13. Any incident of hazing (harassment allegedly done because the target is a member or wants to be a member of a club, organization, or grade level) should be investigated in the same manner as an incident of bullying or harassment.

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### Disciplinary Consequences Guidance

Bullying and harassment prevention require that a school go beyond consequences for confirmed acts of bullying to ensure that preventive programs are in place to support a school environment that nurtures respect and tolerance. As presented throughout this document, effective bullying prevention practices begin with being proactive (education and intervention for prevention of bullying/hazing/harassment is vital to the eradication of harassment). This includes teaching behavioral options for student (and adult) “bystanders.”

As part of the instructional process, however, consequences provide students with critical feedback about the appropriateness of their actions. To address bullying and harassment in schools, a variety of prevention, intervention, and disciplinary options should be provided. You certainly need not, nor should you, suspend or expel students for every violation of the bullying/harassment policy. What follows are some options to consider that have been found to be effective in dealing with students who have engaged in bullying, hazing, or harassment of other students.

The extent to which the consequences below will be effective and deter future occurrences of bullying or harassment is dependent upon the degree to which that consequence is tailored to the specific incident of bullying/harassment and the particular student(s) involved. The consequences are listed in order from least to most intrusive and disruptive to a student’s participation in the regular activities of the school (Also see Section II: “What options are available for addressing bullying/harassment once it occurs?”-)

- Prevention (curriculum, behavioral strategies including schoolwide programs that address culture, climate, and relationships);
- Increased monitoring and enforcement of rules;
- Apology (written/verbal);
- Community service;
- Having the “guilty” student formally speak to students about why bullying is wrong (e.g., in a school assembly to peers or to students in lower grades);
- Financial restitution;
- Teen court or restorative justice;
- Counseling;
- Research and write a paper;
- Loss of privileges (open lunch, early release, extra-curricular activities under the Good Conduct Rule, or computer access)
- Detention;
- Suspension (in-school or out-of-school)

- Expulsion;
- Referral to law enforcement, if the behavior involves a violation of law.

**Note:** In general, consequences should be scaled in relation to the severity of the incident. More severe consequences such as suspension, expulsion or referral to law enforcement should be considered as the student's misconduct becomes severe (e.g., resulting in injury to a student), outrageous, or repeated (e.g., the student's misbehavior continues despite earlier warnings and/or punishment, or the nature of the misconduct escalates in each instance).

## Evaluation, Before, During and After

### 1. Prior to Reported Incidents: Evaluation of the Extent of the Problem

The administrative team collects data describing the extent of bullying and harassment. This can take the form of, but is not limited to, the following:

- Survey students regarding the extent, frequency, and type of bullying/harassment. To the extent possible, use commercially available scales to avoid re-inventing the wheel and to increase the reliability of the evaluation (see Appendix B);
- Evaluate the effectiveness of preventive programs to teach students about bullying or violence prevention;
- Summarize available data that could be expected to be affected by anti-bullying policies (e.g., school disciplinary data on fighting, harassment; days truant or absent);
- To the extent that data are unavailable, use this knowledge as a guide to deciding what data needs to be collected or which data systems improved.

### 2. During Investigation: Keep Accurate Records

The administrative team ensures that forms for reporting and keeping track of interviews are available, and that data on reports and outcomes of reports are kept.

- For each report, make sure that a report of the incident is made and kept. Not all incidents will require extensive and formal documentation, but for purposes of evaluation, documentation should be kept for all incidents, whether there was a finding of bullying/harassment or not;
- Keep a tracking sheet on incidents of bullying over time, including names, date, individuals interviewed, decision, and outcomes/consequences.

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### 3. Ongoing: Evaluating Progress

The administrative team regularly reviews the data to determine the effectiveness of the district's prevention efforts. Sources of such data include:

- The number and nature of incidents of harassment, bullying, or hazing reported.
- The number and nature of such incidents confirmed.
- The most likely locations for incidents.
- Any patterns in the type of students engaging in bullying, harassment, or hazing.
- Interventions or disciplinary consequences imposed.
- Changes in school disciplinary data (e.g., number of fights, verbal assaults).
- Changes in school attendance.
- Re-administer bullying survey periodically (e.g., once a year) to monitor progress in student attitudes.

As per board policy, the superintendent shall report the data at least annually to the board.

# Appendices

**Preventing  
Bullying and  
Harassment**

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# Appendix A: Definitions

- Definitions of Bullying
- Harassment, Sexual
- Harassment, and Hazing

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# Definitions of Bullying, Harassment, Sexual Harassment, and Hazing

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The following definitions are drawn from the professional and legal literature and are meant to represent the best current thinking about these issues. Note that these definitions are not contained in or endorsed by the Iowa Sample Bullying and Harassment Policy. They may, however, prove useful to investigators or school staff seeking to better understand the nature of bullying and harassment.

## Bullying

*“A student is being bullied or victimized when he or she is exposed, repeatedly and over time, to negative actions on the part of one or more other students. Such negative actions include intentionally inflicting, or attempting to inflict, injury or discomfort upon another. These behaviors can be carried out physically (e.g., hitting, kicking, pushing, choking), verbally (e.g., by calling names, threatening, taunting, malicious teasing, spreading nasty rumors), or in other ways, such as making faces or obscene gestures, or intentional exclusion from a group.”*

Olweus, D., & Limber, S. (1999). Bullying prevention program. In D.S. Elliot (Ed.), *Blueprints for Violence Prevention*. Denver, CO: C&M Press.

*“Bullying is a specific type of aggression in which (1) the behavior is intended to harm or disturb, (2) the behavior occurs repeatedly over time, and (3) there is an imbalance of power, with a more powerful person or group attacking a less powerful one. This asymmetry of power may be physical or psychological, and the aggressive behavior may be verbal (e.g., name calling, threats), physical (e.g., hitting), or psychological (e.g., rumors, shunning/exclusion).”*

Nansel, T. R., Overpeck, M., Pilla, R. S., Ruan, W. J., Simons-Morton, B., & Scheidt, P. (2001). Bullying behaviors among US youth: Prevalence and association with psychosocial adjustment. *Journal of the American Medical Association*, 285, 2094-2100.

## Harassment

**General Harassment:** The Iowa Civil Rights Commission defines harassment (in the workplace) as:

*“Harassment is behavior which has the effect of humiliating, intimidating, or coercing someone through personal attack. It is behavior that will make someone uncomfortable or embarrassed, and cause emotional distress. It frequently occurs when one person wants to exert power or control over another person.*

*“Harassment may be intentional with a person targeted personally, or it may be unintentional. What matters is how the person receiving the behavior perceives it to be.”*

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*“While harassment because of sex gets the most attention, harassment because of other protected characteristics such as race, national origin, religion, age or physical and mental disability is also prohibited under state and federal laws. Harassment because of sexual orientation, marital status, or appearance may also be illegal, depending on jurisdiction; it is always disrespectful and inappropriate workplace behavior.”*

From the Iowa Civil Rights Commission publication: *Harassment in the Workplace: It’s Against the Law*. (<http://www.state.ia.us/government/crc/sexualharassmentworkfs.html>)

**Racial Harassment:** Title VI of the Civil Rights Act of 1964 prohibits discrimination based on a student’s race, color and national origin in schools and colleges receiving federal funds. Title VI states that:

*“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”*

OCR defines racial harassment in the following way:

*“A racially hostile environment may be created by oral, written, graphic or physical conduct related to an individual’s race, color, or national origin that is sufficiently severe, persistent or pervasive so as to interfere with or limit the ability of an individual to participate in or benefit from the recipient’s programs or activities...”*

*“Prohibited discrimination occurs when a recipient condones, tolerates or allows a racially hostile environment that it knows about or when recipient’s employees treat students differently because of their race.”*

From OCR’s “Frequently Asked Questions about Racial Harassment” (<http://www.ed.gov/about/offices/list/ocr/qa-raceharass.html>)

**Sexual Harassment:** The Iowa Civil Rights Commission defines sexual harassment as:

*“Sexual harassment consists of unwelcome visual, verbal or physical conduct of a sexual nature that interferes with a person’s education process. The harassment may be quid pro quo, in which a person in authority demands sexual favors in return for a benefit for the student, such as a passing grade or admission to a class or program. A second type of harassment is hostile environment, in which a student is subjected to sexual conduct that creates an offensive, hostile or intimidating atmosphere in the school.”*

*“Some of these behaviors are:*

- Making comments about a person’s body or sex life;*
- Making sexual comments, jokes, gestures;*
- Looking or staring at a person in a sexual manner;*
- Touching, grabbing, pinching, or brushing up against in a sexual way;*

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- *Flashing or mooning;*
- *Spreading rumors about a person's activities or relationships;*
- *Blocking passage in a sexual way;*
- *Writing sexual messages, love notes or sexual graffiti;*
- *Pulling clothing down or off;*
- *Calling a person gay or lesbian;*
- *Spying on someone while showering or dressing;*
- *Forcing kisses or other sexual advances;*
- *Forcing someone to look at sexual pictures or materials."*

From the Iowa Commission on Civil Rights Sexual Harassment Fact Sheet:  
"Sexual Harassment: It's Against the Law" (<http://www.state.ia.us/government/crc/sheducation.html>)

The Office for Civil Rights within the United States Department of Education is responsible for enforcement of Title IX. OCR defines sexual harassment as follows:

*"Sexual harassment can take two forms: quid pro quo and hostile environment.*

*"Quid pro quo harassment occurs when a school employee causes a student to believe that he or she must submit to unwelcome sexual conduct in order to participate in a school program or activity. It can also occur when an employee causes a student to believe that the employee will make an educational decision based on whether or not the student submits to unwelcome sexual conduct. For example, when a teacher threatens to fail a student unless the student agrees to date the teacher, it is quid pro quo harassment.*

*"Hostile environment harassment occurs when unwelcome conduct of a sexual nature is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an education program or activity, or creates an intimidating, threatening or abusive educational environment. A hostile environment can be created by a school employee, another student, or even someone visiting the school, such as a student or employee from another school.*

*"Regardless of which type of harassment occurs, a school must take immediate and appropriate steps to stop it and prevent it from happening again. The judgment and common sense of teachers and administrators are important elements of any response. However, the school is responsible for taking all reasonable steps to ensure a safe learning environment."*

(From Frequently Asked Questions on Sexual Harassment USDOE Office for Civil Rights Website, <http://www.ed.gov/about/offices/list/ocr/qa-sexharass.html>)

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In *Davis v. Monroe County Board of Education*, the United States Supreme Court has ruled that sexual harassment, including peer-on-peer sexual harassment is a form of sex discrimination that violates Title IX:

*“A private Title IX damages action may lie against a school board in cases of student-on-student harassment, but only where the funding recipient is deliberately indifferent to sexual harassment, of which the recipient has actual knowledge, and that harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.”*

## Hazing

*“Hazing can be defined as: any act or ceremony which creates the risk of harm to the student or to any other party and that is committed as a form of initiation into a particular club or activity. Hazing includes, but is not limited to, activities that involve the risk of physical harm, whipping, branding, ingesting vile substances, sleep deprivation, over-exposure to heat or cold, restraint, nudity, or kidnapping. Hazing could also include actions or simulations of a sexual nature, activities that create a hostile, abusive, or intimidating environment for the student.”*

From National Federation of High School Associations “Hazing in High School Athletics: Recognition and Prevention.” *Interscholastic Athletic Administration* magazine (Winter, 2002).

### **708.10 Hazing.**

1.a. A person commits an act of hazing when the person intentionally or recklessly engages in any act or acts involving forced activity which endangers the physical health or safety of a student for the purpose of initiation or admission into, or affiliation with, any organization operating in connection with a school, college, or university. Prohibited acts include, but are not limited to, any brutality of a physical nature such as whipping, forced confinement, or any other forced activity which endangers the physical health or safety of the student.

b. For purposes of this section, “*forced activity*” means any activity which is a condition of initiation or admission into, or affiliation with, an organization, regardless of a student’s willingness to participate in the activity.

2. A person who commits an act of hazing is guilty of a simple misdemeanor.

3. A person who commits an act of hazing which causes serious bodily injury to another is guilty of a serious misdemeanor.

From p. 56. Citation *Iowa Code* Sec. 708.10 (1-3).

# Appendix B: Resources and Programs

- Bullying Prevention Websites
- Bullying Prevention Programs
- Videos
- Website Resources on Harassment

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# Resources and Programs on Bullying and Harassment

## Bullying Prevention Websites

- The Health Resources and Services Administration (HRSA) sponsors a national campaign providing evidence-based information to students, parents, and school staff called *Take a Stand, Lend a Hand, Stop Bullying Now!* <http://stopbullyingnow.hrsa.gov/>
- The Committee for Children provides a wealth of information on bullying and bullying prevention on their website, including programs, research, training opportunities, and helpful links: <http://www.cfchildren.org/bully.html>
- Bullying Online is a UK website with especially useful information on what parents can do. Although some of the information is geared toward British schools, the general approach recommended is equally useful for American users: <http://www.bullying.co.uk>
- The Safe and Responsive Schools websites provide listings of resources and weblinks on bullying prevention and other topics related to school violence prevention:
  - § Indiana: [http://www.indiana.edu/~safeschl/resources\\_bullying.html](http://www.indiana.edu/~safeschl/resources_bullying.html)
  - § Nebraska: <http://www.unl.edu/srs/links.html>

## Bullying Prevention Programs

**Blueprint for Violence Prevention: Book Nine. Bullying Prevention Program** describes a comprehensive bullying prevention program, gives empirical evidence on its effectiveness, provides timelines for implementation and includes program evaluation procedures.

**Author(s):** Olweus, D. & Limber, S.

**Contact Information:** Center for the Study and Prevention of Violence  
University of Colorado at Boulder  
IBS #10  
Campus Box 439  
Boulder, CO 80309-0439  
Fax: (303) 443-3297

<http://www.colorado.edu/cspv/blueprints/model/programs/BPP.html>

*Supplemental lesson plans for the Bullying Prevention program (targeted at middle school students) may be obtained by contacting Dr. Susan Limber, Institute for Families in Society, University of South Carolina, Carolina Plaza, Columbia, SC 29208. Phone: (803) 777-1529; Fax: (803) 777-1120. Contact your area education agency for information about training in the Bullying Prevention Program.*

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**Steps to Respect: A Bullying Prevention Program** is a schoolwide approach to create a safe and respectful school climate that addresses bullying, providing step-by-step guidance, implementation and assessment tools, adult trainings, and student lessons.

**Author(s):** Committee for Children

**Contact Information:** Committee for Children website

<http://www.cfchildren.org/strf/str/strindex/>

Phone: 800-634-4449 ext. 6223

**Bullyproof: A Teacher's Guide on Teasing and Bullying for Use with Fourth and Fifth Grade Students** contains eleven sequential lessons. Class discussions, role plays, case studies, writing exercises, reading assignments, art activities, and nightly homework combine to give students the opportunity to explore and determine the fine distinctions between "teasing" and "bullying." A three-year evaluation, funded by the U.S. Centers for Disease Control and Prevention (CDC), showed that students in the intervention schools as compared with the control schools showed greater accuracy over time in identifying behaviors associated with harassment.

**Author(s):** Sjostrom, L. & Stein, N. D.

**Contact Information:** Wellesley Centers for Women

Wellesley College

106 Central Street

Wellesley, MA 02481

(781) 283-2500

(781) 283-2504 - fax

<http://www.wcwonline.org/title42.html>

**The Bully Prevention Handbook: A Guide for Principals, Teachers, and Counselors** describes a specific bullying prevention program in detail as well as provides instructions, materials, evaluation tools and checklists.

**Author(s):** Hoover, J.H. & Oliver, R.

**Contact Information:** National Educational Service

Bloomington, IN

(888)763-9045 or (812)336-7700

Fax (812) 336-7790

**Bully Proofing Your School: A Comprehensive Approach for Elementary Schools** describes a comprehensive prevention program designed to stop bullying among elementary school students. It outlines staff training and classroom interventions.

**Author(s):** Garrity, C., Jens, K., Porter, W. Sager, N., Short-Camilli, C.

**Contact Information:** Sopris West

4093 Specialty Place

Longmont, CO 80504

Phone: (303) 651-2829 Fax: (303) 776-5934

**No Bullying** is a program geared at teaching elementary and middle school students and staff how to appropriately deal with aggressive students who do not play fair.

**Author(s):** Beverly Title & Lana S. Leonard

**Contact Information:** Teaching Peace

P. O. Box 412

Hygiene, CO, 80533

[info@teachingpeace.org](mailto:info@teachingpeace.org)

# Videos on Bullying and Harassment

**Set Straight on Bullies** (video + book) provides educators with an examination of the myth and realities of schoolyard bullying and changing attitudes about its seriousness. The video is a docudrama “trigger film” designed to stimulate discussion and strategic planning among students, educators, parents and community leaders in the development of bully prevention plans.

**Author(s):** National School Safety Center  
**Contact Information:** National School Safety Center  
141 Duesenberg Drive, Suite 11  
Westlake Village, California, 91362  
(805) 373-9977  
<http://www.nssc1.org/>

**Bullying** is a comprehensive school-based program designed to reduce bullying among middle-school students. The program uses a video and the accompanying teacher’s guide to implement several strategies to help reduce bullying in schools. Can be used in conjunction with the Olweus *Bullying Prevention* program.

**Author(s):** South Carolina Educational Television  
**Contact Information:** South Carolina Educational Television,  
Marketing Department,  
P.O. Box 1100  
Columbia, SC 29211  
(800) 553-7752.  
<http://etvstore.org/products/detail.asp?pid=8402273443&fc=V>

**Changing Perspectives: Paving the Path to Bully-Free Schools** provides general information and commentary to raise awareness about the seriousness of harassment in schools, drawing upon clips from a two-day conference on bullying sponsored by the Iowa State Department of Education.

**Author(s):** State of Iowa Department of Education  
**Contact Information:** State of Iowa Department of Education  
Grimes State Office Building  
Des Moines, Iowa 50319-0146  
(515) 281-5294  
[www.state.ia.us/educate/](http://www.state.ia.us/educate/)

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### Web Resources on Harassment

#### U. S. Department of Education Office for Civil Rights

The Office for Civil Rights enforces several Federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education.

*Resources for Addressing Racial Harassment:* <http://www.ed.gov/about/offices/list/ocr/qa-raceharass.html>

*Sexual Harassment Resources:* <http://www.ed.gov/about/offices/list/ocr/sexharassresources.html>

#### Iowa Civil Rights Commission

The Iowa Civil Rights Commission enforces civil rights compliance in the State of Iowa through compliance, mediation, advocacy and education.

A variety of resources are available on the Iowa Civil Rights Commission website: <http://www.state.ia.us/government/crc/>

# Appendix C:

Guidance from the  
U.S. Department of  
Education Office for  
Civil Rights and the  
Iowa Civil Rights  
Commission

- USDOE Office for Civil Rights  
Publication "Racial Incidents and  
Harassment against Students at  
Educational Institutions:  
Investigative Guidance"
- USDOE Office for Civil Rights  
Pamphlet "Sexual Harassment:  
It's Not Academic"
- Iowa Civil Rights Commission  
Sexual Harassment in Education  
Fact Sheet "Sexual Harassment:  
It's Against the Law"

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**DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
RACIAL INCIDENTS AND HARASSMENT  
AGAINST STUDENTS AT EDUCATIONAL  
INSTITUTIONS; INVESTIGATIVE GUIDANCE**

(Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994 / Notice)

**(also available on the OCR Website at <http://www.ed.gov/print/about/offices/list/ocr/docs/race394.html>)**

**ACTION:** Notice of investigative guidance.

**SUMMARY:** The Assistant Secretary for Civil Rights announces investigative guidance, under title VI of the Civil Rights Act of 1964, that has been provided to the Office for Civil Rights (OCR) Regional Directors on the procedures and analysis that OCR staff will follow when investigating issues of racial incidents and harassment against students at educational institutions. The investigative guidance incorporates and applies existing legal standards and clarifies OCR's investigative approach in cases involving racial incidents and harassment.

EFFECTIVE DATE: March 10, 1994.

**FOR FURTHER INFORMATION CONTACT:** Jeanette J. Lim, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5036 Switzer Building, Washington, DC 20202-1174. Telephone: (202) 205-8635. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-9683 or 1-800421-3481.

**SUPPLEMENTARY INFORMATION:** Title VI of the Civil Rights Act of 1964 (title VI), 42 U.S.C.2000d et seq., prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance. The Department of Education (Department) has promulgated regulations in 34 CFR part 100 to effectuate the provisions of title VI with regard to programs and activities receiving funding from the Department. The regulations in 34 CFR 100.7(c) provide that OCR will investigate whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with title VI and the Department's implementing regulations. The Department has interpreted title VI as prohibiting racial harassment.

The existence of racial incidents and harassment on the basis of race, color, or national origin against students is disturbing and of major concern to the Department. Racial harassment denies students the right to an education free of discrimination. To enable OCR to investigate those incidents more effectively and efficiently, a memorandum of investigative guidance has been distributed to OCR staff. The substance of this memorandum and the accompanying legal compendium are being published today

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with this notice to apprise recipients and students of the legal standards, rights, and responsibilities under title VI with regard to this issue.

The guidance outlines the procedures and analysis that OCR will follow when investigating possible violations of title VI based upon racial incidents and harassment. The guidance relies upon current legal standards.

Dated: March 7, 1994.

Norma V. Cantu,  
Assistant Secretary for Civil Rights.

### **Investigative Guidance on Racial Incidents and Harassment Against Students**

This notice discusses the investigative approach and analysis that the Office for Civil Rights (OCR) staff will follow when investigating issues of discrimination against students based on alleged racial incidents including incidents involving allegations of harassment on the basis of race that occur at educational institutions. This guidance is supplemented by a corresponding compendium of legal resources for detailed legal citations and examples.

Under title VI of the Civil Rights Act of 1964 (title VI) and its implementing regulations, no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the ground of race, color or national origin under any program or activity that receives Federal funds. Racially based conduct that has such an effect and that consists of different treatment of students on the basis of race by recipients' agents or employees, acting within the scope of their official duties, violates title VI. In addition, the existence of a racially hostile environment that is created, encouraged, accepted, tolerated or left uncorrected by a recipient also constitutes different treatment on the basis of race in violation of title VI. These forms of race discrimination are discussed further below.

### **Jurisdiction**

In all cases, OCR must first decide whether it has jurisdiction over claims involving racial incidents or harassment. Under the Civil Rights Restoration Act of 1987, OCR generally has institution-wide jurisdiction over a recipient of Federal funds.

If an institution receives Federal funds, title VI requirements apply to all of the academic, athletic, and extracurricular programs of the institution, whether conducted in facilities of the recipient or elsewhere. Title VI covers all of the uses of property that the recipient owns and all of the activities that the recipient sponsors. Title VI covers all of these operations, whether the individuals involved in a given activity are students, faculty, employees, or other participants or outsiders.



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### Standard Different Treatment by Agents or Employees

As with other types of discrimination claims, OCR will first apply a standard different treatment analysis to allegations involving racial incidents perpetrated by representatives of recipients. Under this analysis, a recipient violates title VI if one of its agents or employees, acting within the scope of his or her official duties, has treated a student differently on the basis of race, color, or national origin in the context of an educational program or activity without a legitimate, nondiscriminatory reason so as to interfere with or limit the ability of the student to participate in or benefit from the services, activities or privileges provided by the recipient. In applying this standard different treatment analysis, OCR staff will address the following questions:

1. Did an official or representative (agent or employee) of a recipient treat someone differently in a way that interfered with or limited the ability of a student to participate in or benefit from a program or activity of the recipient?
2. Did the different treatment occur in the course of authorized or assigned duties or responsibilities of the agent or employee?
3. Was the different treatment based on race color, or national origin?
4. Did the context or circumstances of the incident provide a legitimate, non-discriminatory, non-pretextual basis for the different treatment?

Where, based on the evidence obtained in the investigation, questions 1-3 are answered "yes" and question 4 is answered "no," OCR will conclude that there was discrimination in violation of title VI under this standard different treatment analysis. If questions 1,2 or 3 are answered "no," or if questions 1 through 4 are answered "yes," OCR will find no violation under this theory. If warranted by the nature and scope of the allegations or evidence, OCR will proceed to determine whether the agent's or employee's actions established or contributed to a racially hostile environment as described below. OCR also will conduct a "hostile environment" analysis where actions by individuals other than agents or employees are involved.

### Hostile Environment Analysis

A violation of title VI may also be found if a recipient has created or is responsible for a racially hostile environment i.e., harassing conduct (e.g., physical, verbal, graphic, or written) that is sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient. A recipient has subjected an individual to different treatment on the basis of race if it has effectively caused, encouraged accepted, tolerated or failed to correct a racially hostile environment of which it has actual or constructive notice (as discussed below).

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Under this analysis, an alleged harasser need not be an agent or employee of the recipient, because this theory of liability under title VI is premised on a recipient's general duty to provide a nondiscriminatory educational environment.

To establish a violation of title VI under the hostile environment theory, OCR must find that: (1) A racially hostile environment existed; (2) the recipient had actual or constructive notice of the racially hostile environment; and (3) the recipient failed to respond adequately to redress the racially hostile environment. Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances, with particular attention paid to the factors discussed below.

### **Severe, Pervasive or Persistent Standard**

To determine whether a racially hostile environment exists, it must be determined if the racial harassment is severe, pervasive or persistent. OCR will examine the context, nature, scope, frequency, duration, and location of racial incidents, as well as the identity, number, and relationships of the persons involved. The harassment must in most cases consist of more than casual or isolated racial incidents to establish a title VI violation. Generally, the severity of the incidents needed to establish a racially hostile environment under title V varies inversely with their pervasiveness or persistence.

First of all, when OCR evaluates the severity of racial harassment, the unique setting and mission of an educational institution must be taken into account. An educational institution has a duty to provide a nondiscriminatory environment that is conducive to learning. In addition to the curriculum, students learn about many different aspects of human life and interaction from school. The type of environment that is tolerated or encouraged by or at a school can therefore send a particularly strong signal to, and serve as an influential lesson for, its students.

This is especially true for younger, less mature children, who are generally more impressionable than older students or adults. Thus, an incident that might not be considered extremely harmful to an older student might nevertheless be found severe and harmful to a younger student. For example, verbal harassment of a young child by fellow students that is tolerated or condoned in any way by adult authority figures is likely to have a far greater impact than similar behavior would have on an adult. Particularly for young children in their formative years of development, therefore, the severe, pervasive or persistent standard must be understood in light of the age and impressionability of the students involved and with the special nature and purposes of the educational setting in mind.

As with other forms of harassment, OCR must take into account the relevant particularized characteristics and circumstances of the victim especial] the victim's race and age when evaluating the severity of racial incidents at an educational institution If

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OCR determines that the harassment was sufficiently severe that it would have adversely affected the enjoyment of some aspect of the recipient's educational program by a reasonable person, of the same age and race as the victim, under similar circumstances, OCR will find that a hostile environment existed. The perspective of a person of the same race as the victim is necessary because race is the immutable characteristic upon which the harassment is based. The reasonable person standard as applied to a child must incorporate the age, intelligence and experience of a person under like circumstances to take into account the developmental differences in maturity and perception due to age.

To determine severity, the nature of the incidents must also be considered. Evidence may reflect whether the conduct was verbal or physical and the extent of hostility characteristic of the incident. In some cases, a racially hostile environment requiring appropriate responsive action may result from a single incident that is sufficiently severe. Such incidents may include, for example, injury to persons or property or conduct threatening injury to persons or property.

The size of the recipient and the location of the incidents also will be important. Less severe or fewer incidents may more readily create racial hostility in a smaller environment, such as an elementary school, than in a larger environment, such as a college campus. The effect of a racial incident in the private and personal environment of an individual's dormitory room may differ from the effect of the same incident in a student center or dormitory lounge.

The identity, number, and relationships of the individuals involved will also be considered on a case-by-case basis. For example, racially based conduct by a teacher even an "off-duty" teacher, may have a greater impact on a student than the same conduct by a school maintenance worker or another student. The effect of conduct may be greater if perpetrated by a group of students rather than by an individual student.

In determining whether a hostile environment exists, OCR investigators will also be alert to the possible existence at the recipient institution of racial incidents other than those alleged in the complaint and will obtain evidence about them to determine whether they contributed to a racially hostile environment or corroborate the allegations.

Finally, racial acts need not be targeted at the complainant in order to create a racially hostile environment. The acts may be directed at anyone. The harassment need not be based on the ground of the victim's or complainant's race, so long as it is racially motivated (e.g., it might be based on the race of a friend or associate of the victim). Additionally, the harassment need not result in tangible injury or detriment to the victims of the harassment.

If OCR finds that a hostile environment existed under these standards, then it will proceed to determine whether the recipient

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received notice of the harassment, and whether the recipient took reasonable steps to respond to the harassment.

### Notice

Though the recipient may not be responsible directly for all harassing conduct, the recipient does have a responsibility to provide a nondiscriminatory educational environment. If discriminatory conduct causes a racially hostile environment to develop that affects the enjoyment of the educational program for the student(s) being harassed, and if the recipient has actual or constructive notice of the hostile environment, the recipient is required to take appropriate responsive action. This is the case regardless of the identity of the person(s) committing the harassment a teacher, a student, the grounds crew, a cafeteria worker, neighborhood teenagers, a visiting baseball team, a guest speaker, parents, or others. This is also true regardless of how the recipient received notice. So long as an agent or responsible employee of the recipient received notice, that notice will be imputed to the recipient.

A recipient can receive notice in many different ways. For example, a student may have filed a grievance or complained to a teacher about fellow students racially harassing him or her. A student, parent, or other individual may have contacted other appropriate personnel, such as a principal, campus security, an affirmative action officer, or staff in the office of student affairs. An agent or responsible employee of the institution may have witnessed the harassment. The recipient may have received notice in an indirect manner, from sources such as a member of the school staff, a member of the educational or local community, or the media. The recipient also may have received notice from flyers about the incident(s) posted around the school.

In cases where the recipient did not have actual notice, the recipient may have had constructive notice. A recipient is charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. In other words, if the recipient could have found out about the harassment had it made a proper inquiry, and if the recipient should have made such an inquiry, knowledge of the harassment will be imputed to the recipient. A recipient also may be charged with constructive notice if it has notice of some, but not all, of the incidents involved in a particular complaint.

In some cases, the pervasiveness, persistence, or severity of the racial harassment may be enough to infer that the recipient had notice of the hostile environment (e.g., a racially motivated assault on a group of students). A finding that a recipient had constructive notice of a hostile environment meets the notice requirement of the analysis.

If the alleged harasser is an agent or employee of a recipient, acting within the scope of his or her official duties (i.e., such that the individual has actual or apparent authority over the students

involved), then the individual will be considered to be acting in an agency capacity and the recipient will be deemed to have constructive notice of the harassment. If the recipient does not have a policy that prohibits the conduct of racial harassment, or does not have an accessible procedure by which victims of harassment can make their complaints known to appropriate officials, agency capacity and thus constructive notice is established.

The existence of both a policy and grievance procedure applicable to racial harassment (depending upon their scope, accessibility and clarity, and upon the acts of harassment) is relevant in the determination of agency capacity. A policy or grievance procedure applicable to harassment must be clear in the types of conduct prohibited in order for students to know and understand their rights and responsibilities. As discussed above, in the education context, the person from whose perspective the apparent authority of an agent or employee of a recipient must be evaluated is a reasonable student of the same age, intelligence and experience as the alleged victim of the harassment.

Finally, in order to find that the recipient had a duty to respond to notice of a racially hostile environment, OCR must examine the facts and circumstances to establish that the recipient knew or should have known that the conduct was of a racial nature or had sufficient information to conclude that it may have been racially based. OCR will consider whether the incident involved explicitly racial conduct or whether the circumstances indicate that, through symbols or other persuasive factors, the recipient should have recognized that the conduct was in fact, or was reasonably likely to have been, racial (e.g., the hanging of nooses, random violence against minorities, etc.).

### **Recipient's Response**

Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. Thus, if OCR finds that the recipient took responsive action, OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness. The appropriate response to a racially hostile environment must be tailored to redress fully the specific problems experienced at the institution as a result of the harassment. In addition, the responsive action must be reasonably calculated to prevent recurrence and ensure that participants are not restricted in their participation or benefits as a result of a racially hostile environment created by students or non-employees.

In evaluating a recipient's response to a racially hostile environment, OCR will examine disciplinary policies, grievance policies, and any applicable anti-harassment policies. OCR also will determine whether the responsive action was consistent with any established institutional policies or with responsive action taken with respect to similar incidents.

Examples of possible elements of appropriate responsive action

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include imposition of disciplinary measures, development and dissemination of a policy prohibiting racial harassment, provision of grievance or complaint procedures, implementation of racial awareness training, and provision of counseling for the victims of racial harassment.

### Conclusion

OCR will investigate allegations of racial incidents where the incidents fall within its jurisdiction. Based on the facts and circumstances of each case OCR will use either or both the standard different treatment analysis and the hostile environment analysis to determine whether title Vt has been violated.

If OCR determines that an agent or employee, acting within the scope of his or her employment, treated someone differently on the basis of race, color, or national origin without a legitimate, nondiscriminatory reason for the treatment (i.e., direct different treatment), then OCR will conclude that Title Vt was violated. If OCR determines that a racially hostile environment exists at a recipient, the recipient had notice of it, and the recipient failed to take adequate action in response to the hostile environment, OCR will also find a violation. If OCR determines that a hostile environment was not established, or that a hostile environment was established but that the recipient either (1) did not have notice of it; or (2) had notice of it and took adequate action in response, OCR will find no violation.

### Appendix Racial Incidents and Harassment Against Students - Compendium of Legal Resources

This compendium provides an outline summarizing key legal resources (including statutes, regulations, cases, and letters of findings) to serve as a reference for the Office for Civil Rights (OCR) staff in investigating possible discrimination against students based on racial incidents including incidents involving allegations of harassment on the basis of race that occur at educational institutions. It is intended to be used in conjunction with the investigative guidance on racial incidents and harassment, and follows the same general outline as that guidance.

The investigation and analysis of cases under title Vt of the Civil Rights Act of 1964, 42 U.S.C. 2000d, (title Vt) relies, to a large extent, on case law developed under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, which prohibits discrimination on the basis of race, color, national origin, sex, and religion in employment. See *Dillon County District No. I and South Carolina State Department of Education*, No. 84-VI-16 (Civil Rights Reviewing Auth. 1987); *United States v. LULAC*, 793 F.2d 636, 648-49 (5th Cir. 1986); *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985); and *NAACP v. Medical Center, Inc.* 657 F.2d 1322 (3d Cir. 1981). See also, generally, EEOC Revised Enforcement Guidance on Recent Developments in Disparate Treatment Theory, No. N- 915.002 (July 14, 1992).

### **I. Jurisdiction**

OCR must first decide whether it has jurisdiction over a claim involving racial incidents or harassment. OCR has jurisdiction if the complaint alleges that the racially based conduct occurred in the context of an operation of an elementary, secondary, or postsecondary school or institution, or other entity that is a recipient of Federal funds.

#### **A. Title Vt Prohibits Race Discrimination in Federally Funded Programs and Activities**

Title Vt prohibits race discrimination in programs and activities that receive Federal financial assistance. See also 34 CFR part 100 (regulations effectuating provisions of title Vt).

#### **B. OCR Has Institution-Wide Jurisdiction**

Under the Civil Rights Restoration Act of 1987, OCR generally has institution-wide jurisdiction over a recipient of Federal funds.

#### **C. Allegation Must Relate to an Operation of Recipient**

Discrimination must be alleged in an “operation” of a recipient. See 42 U.S.C. 2000d-4a.

#### **D. Specific Discriminatory Actions Prohibited**

The regulations implementing Title Vt include provisions prohibiting discrimination based on race in terms of:

1. Services: Provision of services or other benefits. 34 CFR 100.3(b)(1)(iii).
2. Privileges: Restriction of an individual’s enjoyment of an advantage or privilege enjoyed by others. 34 CFR 100.3(b)(1)(iv).
3. Participation: Opportunities to participate. 34 CFR 100.3(b)(1)(vi).

The regulations also include a general, catchall provision prohibiting race discrimination. See 34 CFR 100.3(b)(5).

### **II. Standard Different Treatment by Agents or Employees**

As with other claims of race discrimination under Title VI, OCR should first apply a standard different (disparate) treatment analysis to allegations involving racial incidents perpetrated by representatives of recipients. In doing so, OCR must determine whether a student was treated differently than other students on the basis of race without a legitimate, nondiscriminatory, non-pretextual reason.

The basic elements of a different treatment case were set out by the U.S. Supreme Court in *McDonnell Douglas Corp. v. Green*,



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411 U.S. 792 (1973) (focusing on indirect evidence of such treatment), a Title VII employment case. See also *United States Postal Service Board of Governors v. Aikens*, 460 U.S. 711 (1983); *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981).

### A. Prima Facie Case

1. Identify the racial group to which the complainant belongs for purposes of differential treatment analysis.
2. Determine whether the complainant was treated differently than similarly situated members of other racial groups with regard to a service, benefit, privilege, etc., from the recipient. See, e.g., *University of Pittsburgh*, OCR Case No. 03-89-2035 (campus police treated black students more severely than white students); *Roosevelt Warm Springs Institute for Rehabilitation*, OCR Case No. 04-893003 (similar).

### B. Rebuttal of Prima Facie Case by Showing Legitimate, Nondiscriminatory Reason for Treatment

After a prima facie case of race discrimination has been established against the recipient, OCR must then determine whether the recipient had a legitimate, nondiscriminatory reason for its action(s) which would rebut the prima facie case against it.

### C. Recipient's Rebuttal Overcome With Showing of Pretext

If the prima facie case of discrimination is rebutted, OCR must next determine whether the recipient's asserted reason for its action(s) is a mere pretext for discrimination. Ultimately however, the weight of the evidence must convince OCR that actual discrimination occurred. See *St. Mary's Honor Center v. Hicks*, 113 S.Ct. 2742 (1993) (under title VII disparate treatment analysis, ultimate burden of persuasion regarding intentional discrimination remains at all times with plaintiff).

## III. Hostile Environment Analysis

A violation of Title VII may be found if racial harassment is severe, pervasive, or persistent so as to constitute a hostile or abusive educational environment. See *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986) (sets similar standard for sexual harassment under title IX) (relying on *Rogers v. EEOC*, 454 F.2d 234, 238 (5th Cir. 1971) (race discrimination can consist of an "environment heavily charged with ethnic or racial discrimination"), cert. denied, 406 U.S. 957 (1972)); *Harris v. Forklift Systems, Inc.*, 114 S.Ct. 367 (1993) (reiterating *Meritor* standard). Accord, *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1412 (10th Cir. 1987); *Snell v. Suffolk County*, 782 F.2d 1094, 1102 (2d Cir. 1986); *Gray v. Greyhound Lines, East*, 545 F.2d 169, 176 (D.C. Cir. 1976) (noting with approval that EEOC has consistently held that title VII gives employee right to "a working environment free of racial intimidation"). See also,



e.g., Defiance College, OCR Case No. 05-9>2024 (violation where college was aware of “repeated” and “patently offensive” verbal and physical racial harassment committed by students).

Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances. See *Harris v. Forklift Systems, Inc.*, 114 S.Ct. 367 (1993) (under title VII. factors to consider may include frequency and severity of discriminatory conduct, whether it is physically threatening or humiliating or merely offensive, and whether it interferes with work performance; psychological harm is not required but may be taken into account like any other relevant factor); *Johnson v. Bunny Bread*, 646 F.2d 1250,1257 (8th Cir.1981) (court examined nature, frequency, and content of racial harassment, as well as identities of perpetrators and victims). See also *Snell*, 782 F.2d at 1103 (citing *Henson v. City of Dundee*, 682 F.2d 897,904 (11th Cir. 1982)) (same standard for sexual harassment).

#### A. Harassment Must Be Severe, Pervasive or Persistent

##### 1. Pervasive or Persistent

Where the harassment is not sufficiently severe, it must consist of more than casual or isolated racial incidents to create a racially hostile environment. Compare *Trenton Junior College*, OCR Case No. 07-87-6006 (title Vt violated where college failed to provide adequate security for black basketball players who were subjected to a break-in, cross-burning, and placement of raccoon skins at their campus residences) with *University of California, Santa Cruz*, OCR Case No. 09-91-6002 (no finding of racial harassment where OCR found only isolated individual incidents over three year period). See also, e.g., *Snell*, 782 F.2d at 1103 (“To establish a hostile atmosphere, \* \* \* plaintiffs must prove more than a few isolated incidents of racial enmity \* \* \*. Casual comments, or accidental or sporadic conversation will not trigger equitable relief”); *Gates Rubber Co.*, 833 F.2d 1406; *Powell v. Missouri State Highway and Transportation Department*, 822 F.2d 798 (8th Cir.1986); *Moylan v. Maries County*, 792 F.2d 746 (8th Cir. 1986); *Henson*, 682 F.2d at 904 (quoting *Rogers*, 454 F.2d at 238).

OCR and Federal courts have found a hostile environment where there was a pattern or practice of harassment, or where the harassment was sustained and nontrivial. See, e.g., *Wapato School District No. 207*, OCR Case No. 10-821039 (Title Vt violated where teacher repeatedly treated minority students in racially derogatory manner). Compare *Walker v. Ford Motor Co.*, 684 F.2d 1355 (11th Cir. 1982) (hostile environment where use of derogatory terms was “repeated, continuous, and prolonged”) with *Gilbert v. City of Little Rock*, 722 F.2d 1390 (8th Cir. 1983) (hostile environment not created by isolated and allegedly unrelated racial slurs), cert. denied.466 U.S. 972 (1984).

##### 2. Severe

The severity of individual incidents must also be considered. See,

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e.g., *Vance v. Southern Bell Telephone and Telegraph Co.*, 863 F.2d 1503,1510-11 (11th Cir. 1989) (determination whether conduct is "severe and pervasive" does not turn solely on number of incidents; fact-finder must examine gravity as well as frequency) (decided under 42 U.S.C. 1981); *Carrero v. New York City Housing Authority*, 890 F.2d 569,578 (2d Cir. 1989) ("It is not how long the \* \* \* obnoxious course of conduct lasts. The offensiveness of the individual actions \* \* is also a factor to be considered.").

Generally, the severity of the incidents needed to establish a racially hostile environment varies inversely with their pervasiveness or persistence. See EEOC Policy Guidance on Current Issues of Sexual Harassment, No. N915.050 (Mar. 19,1990) ("the more severe the harassment, the less need to show a repetitive series of incidents").

a. Special mission and duties of educational institutions. The unique setting and mission of an educational institution must be taken into account when OCR evaluates the severity of racial harassment under title Vt. School officials have a duty to provide a nondiscriminatory environment conducive to learning. See generally 34 CFR part 100 (regulations prohibiting any form of race discrimination which interferes with educational programs or activities under title Vt).

b. Characteristics and circumstances of victim especially race and age. OCR must take into account the characteristics and circumstances of the victim on a case-by-case basis particularly the victim's race and age when evaluating the severity of racial incidents at an educational institution. See *Harris v. International Paper Co.*, 765 F. Supp.1509, 1515-16 (D. Me. 1991) (the appropriate standard to apply in a "hostile environment racial harassment case is that of a 'reasonable black person' "). See also, e.g., *Ellison v. Brady*, 924 F.2d 872 (5th Cir. 1991) (discussing differences in perspectives of men and women toward sexual harassment, and need to examine harassment from perspective of reasonable victim with characteristic upon which harassment was based).

The reasonable person standard as applied to children is "that of a reasonable person of like age, intelligence, and experience under like circumstances." Restatement (2d), Torts Section 283A (1965) (Comment b: "The special standard to be applied in the case of children arises out of the public interest in their welfare and protection \* \* \* "). See also, e.g., *Honeycutt v. City of Wichita*, 247 Kan. 250,796 P.2d 549 (Kan. 1990) (adopting Restatement standard); *Standard v. Shine*, 278 S.C. 337, 295 S.E.2d 786 (S.C.1982) (same); *Camerlinck v. Thomas*, 209 Neb. 843, 312 N.W.2d 260 (Neb. 1981) (same).

c. Nature of incident. The nature of the incident(s) should also be considered. See, e.g., *Vance v. Southern Bell Telephone and Telegraph Co.*, 863 F.2d at 1506-10 (hostile environment created where noose was hung twice at employee's workstation); *Watts v. New York City Police Department*, 724 F. Supp. 99,105 (S.D.N.Y.1989) (same, based on two sexual assaults).

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A single incident that is sufficiently severe may establish a racially hostile environment. See EEOC Policy Guidance on Current Issues of Sexual Harassment, No. N-915.050 (Mar.19 1990) and cases cited therein, *Barrett v. Omaha National Bank*, 584 F. Supp. 22 (D. Neb.1983), *aff'd*, 726 F.2d 424 (8th Cir. 1984) (sexually hostile environment established by sexual assault).

d. Size of recipient and location of incidents. The size of the recipient and the location of the incidents also may be important.

e. Identity of individuals involved. The identity, number, and relationships of the individuals involved will also be considered on a case-by-case basis. See, e.g., *Wapato School District No. 207*, OCR Case No.10-82-1039 (racial harassment of students by teacher was particularly opprobrious).

f. Other incidents at the recipient. OCR will also consider other racial incidents at the institution. See, e.g. *Midwest City-Del City Public Schools* OCR Case No. 06-92-1012 (finding of racially hostile environment based in part on several racial incidents at school which occurred shortly before incidents in complaint).

g. Harassment need not be directed specifically at complainant or tangibly harm complainant or victim. The regulations implementing Title Vt provide that a complaint may be filed by i'[a]ny person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part." 34 CFR 100.7(b). Thus, in hostile environment cases, the harassment need not be targeted specifically at the individual complainant. See *Waltman v. International Paper Co.*, 875 F.2d 468, 477 (5th Cir. 1989) (all sexual graffiti in office, not just that directed at plaintiff, was relevant to plaintiff's claim); *Hall v. Gus Construction Co.*, 842 F.2d 1010, 1015 (8th Cir. 1988) (evidence of sexual harassment directed at others is relevant to show hostile environment); *Gates Rubber Co.*, 833 F.2d at 1415 ("one of the critical inquiries in a hostile environment claim must be the environment" as a whole) (emphasis in original); *Walker v. Ford Motor Co.*, 684 F.2d 1355,1358-59 (11th Cir. 1982) hostile environment established where racial harassment made plaintiff "feel unwanted and uncomfortable in his surroundings," even though it was not directed at him).

The harassment need not be based on the ground of the complainant's or victim's race, so long as it is racially motivated. See, e.g., *Center Grove Community School*, OCR Case No.1591-1168 (title VI violated where white girl was forced to withdraw from all white school, as result of harassment by classmates which included note criticizing her association with black student at another school).

To establish a hostile environment harassment need not result in a tangible injury or detriment to the complainant or the victim of the harassment. *Vinson* 477 U.S. at 64. See also, e.g., *Harris v. Forklift Systems, Inc.*, 114 S.Ct. at 371 (under title VII several factors are considered including whether behaviors interfere with work performance psychological harm is not required but may be

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taken into account like any other relevant factor); Gilbert, 722 F.2d at 1394 (environment “which significantly and adversely affects the psychological well-being of an employee because of his or her race” is enough to constitute title VII violation); Bundy v. Jackson, 641 F.2d 934, 943-45 (D.C. Cir.1981) (protection against race and sex discrimination extends to “psychological and emotional work environment”).

### B. Notice

A recipient has a duty to provide a nondiscriminatory educational environment, but it must somehow receive notice of racial harassment in order to be found responsible for it. See Vinson, 477 U.S. at 72; see also Steele v. Offshore Shipbuilding, Inc., 867 F.2d 1311 (11th Cir. 1989); Lipsett v. University of Puerto Rico, 864 F.2d 881 (1st Cir.1988).

#### 1. Actual Notice

A recipient may be found liable for racial harassment if it has actual knowledge of the racially offensive behavior or actions. See, e.g., Hunter v. Allis-Chalmers Corp., 797 F.2d 1417 (7th Cir. 1986) (liability exists if management-level employees were aware of barrage of offensive conduct) Katz v. Dole, 709 F.2d 251 (4th Cir. 1983) (actual knowledge where victim complains of harassment to appropriate authorities); Henson v. City of Dundee, 682 F.2d 897, 904 (11th Cir. 1982).

#### 2. Constructive Notice

A recipient may be found liable where it reasonably should have known of the harassment e.g., because the harassment was so pervasive that its awareness may be inferred. See Paroline v. Unisys Corp., 879 F.2d 100 (4th Cir. 1989) (liability may be imputed where employer knew or should have known about prior conduct of harasser toward other women), vacated in part on other grounds, 900 F.2d 27 (4th Cir. 1990); Yates v. Avco Corp., 819 F.2d 630 (6th Cir. 1987) (constructive notice where employee harassed women on a daily basis); Waltman, 875 F.2d 468 (possibility of constructive notice where sexual graffiti existed in numerous locations); Vance v. Southern Bell Telephone and Telegraph Co., 863 F.2d at 1510-11; Swentek v. USAir, Inc., 830 F.2d 552 (4th Cir. 1987).

If the alleged harasser is an agent or employee of a recipient, acting within the scope of his or her official duties (i.e., such that the individual has actual or apparent authority over the students involved), then the individual will be considered to be acting in an agency capacity and the recipient will be deemed to have constructive notice of the harassment. See, e.g., Kauffman v. Allied Signal, Inc., Autolite Division, 970 F.2d 178 (6th Cir.) (“scope of employment” standard for holding employers liable for supervisory harassment is based on traditional agency principles, such as when and where harassment took place, and whether it was foreseeable), cert. denied, 113 S.Ct. 831 (1992). See also EEOC Policy Guidance on Current Issues of Sexual Harassment, N-915.050 (Mar. 19, 1990) (apparent authority

exists where third parties reasonably believe that actions of supervisor represent exercise of authority possessed by virtue of employer's conduct).

In evaluating whether constructive notice should be imputed to a recipient, the availability, coverage and public dissemination of anti-discrimination policies and grievance procedures for students will be considered in determining whether the recipient has made a sufficient effort to become aware of racial incidents if and when they occur. See *Meritor Savings Bank*, 477 U.S. at 72-73 (existence of uninvoked grievance procedures and policies against discrimination is relevant to issue of employer liability for sexual harassment, but not dispositive).

### C. Recipient's Response

#### 1. Duty to Take Reasonable Steps to End Harassment

Once a recipient has notice of a racially hostile environment, it has a duty to take reasonable steps to eliminate it. If it fails to respond adequately to the hostile environment, then the recipient may be found to have violated title VI. See, e.g., *California State University, Chico*, OCR Case No. 09-89-2106 (inadequate response to racial harassment where university had no written grievance procedure and failed to interview most of the individuals involved); *Township High School District No. 214*, OCR Case No. 05-82-1097 (OCR found violation where school district failed to take adequate steps to correct repeated racial harassment by students, of which employees were aware). See also, e.g., *Snell v. Suffolk County*, 782 F.2d 1094 (2d Cir. 1986) (responsibility depends on gravity of harm, nature of work environment, and resources available); *HaZl v. Gus Construction Co., Inc.*, 842 F.2d 1010 (8th Cir. 1988) (employer will be liable for failing to discover what is going on and to take remedial steps when actions are so numerous, egregious, and concentrated as to add up to campaign of harassment); *Paroline*, 879 F.2d 100 (4th Cir. 1989); *Henson v. City of Dundee*, 682 F.2d 897, 904 (11th Cir. 1982).

#### 2. Response or Remedy Should Redress Actual Problems

The appropriate response or remedy for a hostile environment should be tailored to redress the specific problems experienced at the institution. See, e.g., *Trenton Junior College*, OCR Case No. 07-87-6006 (region developed remedial plan with college that included staff training on racial harassment, payment of compensation to harassed students and individuals who assisted the students in arranging for their safety, implementation of special efforts including financial aid to recruit black students, and development of plan for handling future harassment complaints).

#### 3. Response Must Reasonably Attempt to Prevent Recurrence

The responsive action taken by a recipient must be reasonably calculated to prevent recurrence and ensure that individuals are

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not restricted in their participation or benefits as a result of a racially hostile environment created by students or non-employees. See, e.g., *Brooms v. Regal Tube Co.*, 881 F.2d 412 (7th Cir. 1989) (response must be reasonably calculated to prevent further harassment under particular facts and circumstances of case at time allegations are made; courts should not focus solely on whether remedial activity ultimately succeeded, but should determine whether total response was reasonable); *Waltman v. International Paper Co.*, 875 F.2d 468,476 (5th Cir.1989) (response must be reasonably calculated to halt harassment); *Bundy v. Jackson*, 641 F.2 934 (D.C. Cir. 1981) (employer liable where supervisor had full notice of harassment and did nothing to stop or investigate practice; employer must take all necessary steps to investigate and correct harassment including warnings, appropriate discipline, and other means of preventing harassment).

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## USDOE Office For Civil Rights Pamphlet

### Sexual Harassment: It's Not Academic

***"First of all, let me say that being sexually harassed since 5th grade has gone beyond the damage of affecting the way I feel.... Now...I have no pride, no self- confidence, and still no way out of the [misery] I am put through in my school."*[1]**

Sexual harassment of students is a real and serious problem in education at all levels, including elementary and secondary schools as well as colleges and universities. It can affect any student, regardless of sex, race, or age. Sexual harassment can threaten a student's physical or emotional well-being, influence how well a student does in school, and make it difficult for a student to achieve his or her career goals. Moreover, sexual harassment is illegal—Title IX of the Education Amendments of 1972 (Title IX) prohibits sex discrimination, including sexual harassment. Preventing and remedying sexual harassment in schools is essential to ensure nondiscriminatory, safe environments in which students can learn.

***A...student should feel safe and comfortable walking down the halls of his or her school. School is a place for learning and growing. Sexual harassment stops that process.*[2]**

This pamphlet provides school administrators, teachers, students, and parents with fundamental information to assist them in recognizing and dealing with sexual harassment under Title IX. It outlines basic principles in question-and-answer format. Some more information about a school's responsibilities has been omitted, and school officials should read "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties" to ensure a full understanding of the law. Parents and students can also consult this Guidance, for more information about student rights. The Guidance was published by the Office for Civil Rights in the Federal Register on **March of 1997** and may be obtained from any of the OCR Enforcement Offices or by calling 1-800-421-3481. It is also posted on the OCR Reading Room page.

Sexual harassment can occur at any school activity and can take place in classrooms, halls, cafeterias, dormitories and other areas. Too often, the behavior is allowed to continue simply because students and employees are not informed about what sexual harassment is or how to stop it. Students, parents and school staff must be able to recognize sexual harassment, and understand what they can do to prevent it from occurring and how to stop it if it does occur.

Harassing behavior, if ignored or not reported, is likely to continue and become worse, rather than go away. The impact of sexual harassment on a student's educational progress and

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attainment of future goals can be significant and should not be underestimated. As a result of sexual harassment, a student may, for example, have trouble learning, drop a class or drop out of school altogether, lose trust in school officials, become isolated, fear for personal safety, or lose self-esteem.

For these reasons, a school should not accept, tolerate or overlook sexual harassment. A school should not excuse the harassment with an attitude of "that's just emerging adolescent sexuality" or "boys will be boys," or ignore it for fear of damaging a professor's reputation. This does nothing to stop the sexual harassment and can even send a message that such conduct is accepted or tolerated by the school. When a school makes it clear that sexual harassment will not be tolerated, trains its staff, and appropriately responds when harassment occurs, students will see the school as a safe place where everyone can learn.

### TITLE IX AND SEXUAL HARASSMENT

Title IX protects students from unlawful sexual harassment in all of a school's programs or activities, whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere. Title IX protects both male and female students from sexual harassment, regardless of who the harasser is.

Sexual harassment can take two forms: **quid pro quo** and **hostile environment**.

**Quid pro quo harassment** occurs when a school employee causes a student to believe that he or she must submit to unwelcome sexual conduct in order to participate in a school program or activity. It can also occur when an employee causes a student to believe that the employee will make an educational decision based on whether or not the student submits to unwelcome sexual conduct. For example, when a teacher threatens to fail a student unless the student agrees to date the teacher, it is quid pro quo harassment.

***"Dear Beth: I'm 18 and in high school. I have this really cute math teacher....One day he asked me to a fancy restaurant to talk about my grades. He just kept telling me how beautiful I was and asked if I could come over to his house next week...he told me it would bring up my grades. I get very bad grades in math....What should I do?"[3]***

It does not matter whether the student refuses to submit to the teacher's demands and suffers the threatened harm, or does what the teacher wants and thus avoids the harm. In both cases, the harassment by the school employee is unlawful.

***"The financial aid officer made it clear that I could get the money I needed if I slept with him."[4]***



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**Hostile environment harassment** occurs when unwelcome sexually harassing conduct is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an education program or activity, or creates an intimidating, threatening or abusive educational environment. A hostile environment can be created by a school employee, [5] another student,[6] or even someone visiting the school, such as a student or employee from another school.

Regardless of which type of harassment occurs, a school must take immediate and appropriate steps to stop it and prevent it from happening again. The judgment and common sense of teachers and administrators are important elements of any response. However, the school is responsible for taking all reasonable steps to ensure a safe learning environment.

***"There were two or three boys touching me...and I'd tell them to stop but they wouldn't. This went on for...months. Finally I was in one of my classes when all of them came back and backed me into a corner and started touching me all over.... After the class I told the principal, and he and the boys had a little talk. And after the talk was up, the boys came out laughing because they got no punishment."*[7]**

Under federal law, a school is required to have a policy against sex discrimination and notify employees, students, and elementary and secondary school parents of the policy. A policy against sex discrimination, particularly one that specifically addresses sexual harassment, is an extremely important method for preventing sexual harassment. Such a policy lets students, parents, and employees know that sexual harassment will not be tolerated.

***If a school does not have a sexual harassment policy in place, students (and/or parents) can meet with the principal, dean, or other administrator to ask that he or she develop one. The students should remind the school official that the school has an obligation under the law to stop sexual harassment.*[8]**

A school is also required to adopt and publish grievance procedures for resolving sex discrimination complaints, including complaints of sexual harassment. Good procedures provide an effective means for promptly and appropriately responding to sexual harassment complaints. Finally, a school is required to have at least one employee responsible for coordinating efforts to comply with Title IX.

### QUESTIONS AND ANSWERS

**Q: What are some examples of sexual conduct?**

A: Some examples of sexual conduct are:

- sexual advances

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- touching of a sexual nature
- graffiti of a sexual nature
- displaying or distributing of sexually explicit drawings, pictures and written materials
- sexual gestures
- sexual or “dirty” jokes
- pressure for sexual favors
- touching oneself sexually or talking about one’s sexual activity in front of others
- spreading rumors about or rating other students as to sexual activity or performance.

Not all physical conduct would be considered sexual in nature. Some examples are a high school athletic coach hugging a student who made a goal, a kindergarten teacher’s consoling hug for a child with a skinned knee, or one student’s demonstration of a sports move requiring contact with another student.

### **Q: Must sexual conduct be unwelcome in order to be sexual harassment?**

A: Yes. Conduct is unwelcome if the student does not request or invite the conduct, and views it as offensive or undesirable. However, just because a student does not immediately speak out or complain does not mean that the sexual conduct was welcome. A student might feel that objecting would only result in increasing the harassing conduct. Sometimes, students feel intimidated by the conduct and/or feel too embarrassed, confused or fearful to complain or resist. Also, a student who willingly participates in conduct on one occasion may later decide that the same conduct on a subsequent occasion has become unwelcome.

***It is difficult to say “no” to a teacher, coach...and the “popular” kids. A person who complains about sexual harassment is often rejected by other kids and labeled a troublemaker.[9]***

Both parents and school officials should encourage students to speak out and complain about unwelcome sexual conduct—to the harasser, to a school employee, or to a parent. Using age-appropriate methods, parents and school officials should let students know that they should not tolerate unwanted sexual conduct.

### **Q: Does all sexual conduct create a sexually hostile environment?**

A: No. Although even one incident of quid pro quo harassment (for example, threatening to fail a student) is unlawful, generally,

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a hostile environment may be created by a series of incidents. So, for example, a sexual joke, even if offensive to the student to whom it was told, will not by itself create a sexually hostile environment. However, a sexual assault or other severe single incident can create a hostile environment.

### **Q: When does sexual conduct create a sexually hostile environment?**

A: In order to answer this question several factors must be considered. Did the student view the environment as hostile? Was it reasonable for the student to view the environment as hostile? All relevant circumstances should be considered, including the following:

- the nature of the conduct;
- how often the conduct occurred;
- how long the conduct continued;
- the age and sex of the student;
- whether the conduct adversely affected the student's education or educational environment;
- whether the alleged harasser was in a position of power over the student subjected to the harassment;
- the number of alleged harassers;
- the age of the alleged harasser;
- where the harassment occurred;
- other incidents of sexual harassment at the school involving the same or other students.

***These thoughts and feelings are warning signals of sexual harassment. They can alert you to the possibility that you are being sexually harassed. Feelings: confused, guilty, helpless, angry, frightened, hopeless, scared and alone. Thoughts: I can't believe this is happening to me. Why Me? What did I do? I hate you for doing this. If I say anything, everyone will think I'm crazy.[10]***

### **Q: What steps can a school take to prevent sexual harassment?**

A: OCR's experience shows that the best way for a school to deal with sexual harassment is to prevent it from occurring. A school may take a number of steps to prevent harassment:

- develop and publicize a sexual harassment policy that clearly states sexual harassment will not be tolerated and that explains what types of conduct will be considered sexual harassment;

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- develop and publicize a specific grievance procedure for resolving complaints of sexual harassment;
- develop methods to inform new administrators, teachers, guidance counselors, staff, and students of the school's sexual harassment policy and grievance procedure;
- conduct periodic sexual harassment awareness training for all school staff, including administrators, teachers, and guidance counselors
- conduct periodic age-appropriate sexual harassment awareness training for students;
- establish discussion groups for both male and female students where students can talk about what sexual harassment is and how to respond to it in the school setting;
- survey students to find out whether any sexual harassment is occurring at the school;
- conduct periodic sexual harassment awareness training for parents of elementary and secondary students;
- work together with parents and students to develop and implement age-appropriate, effective measures for addressing sexual harassment.

Adoption of strong preventive measures is often the best way to confront the serious problem of sexual harassment. In addition, the steps described above may also be useful in responding to sexual harassment once it has occurred to ensure that it does not happen again.

### **Q: What can a student do if he or she is confronted with sexual harassment?**

A: A student who believes he or she has been sexually harassed (or a parent who believes that his or her child has been harassed) should immediately report it to a responsible school official. This could be a teacher, principal, faculty member, administrator, campus security officer, affirmative action officer, staff in the office of student affairs or the school's Title IX coordinator.[11]

If the student feels comfortable doing so, the student should let the harasser know that he or she does not welcome the conduct and wants it to stop.

***"A guy in my chem class kept following me around, staring at me, and asking me out. At first, I told him I was busy, or not feeling well. Eventually, it got so bad that I just had to tell him that I didn't want to go out with him, period...and, once I told him, he stopped! And, if he hadn't, I knew exactly who to report it to!"[12]***

A student may also file a complaint with the school or with OCR, as explained below.

**Q: How should a school respond to information about alleged sexual harassment?**

A: If a school receives information that sexual harassment may have occurred, the school should move quickly to determine what happened. When a student or parent reports sexual harassment, the school should explain how its grievance procedures work and offer the student or parent the opportunity to use them.

This does not mean that every school employee who learns that harassment may have occurred is directly responsible for finding out what happened, or for taking steps to end any harassment and prevent its recurrence. However, the school should have procedures in place that clearly define each employee's responsibilities. For example, a school could decide that certain employees are only required to report evidence or claims of possible harassment to other school officials (for example, a principal, dean, or Title IX coordinator) who have the responsibility to take appropriate action. The important thing is that something be done and that the school take steps to find out the facts.

Sometimes a school may need to take interim measures before the investigation is concluded. These steps may include reporting the incident to law enforcement officials, separating the students, or allowing the person claiming harassment to transfer to another class.

Regardless of how a school finds out about possible harassment, it should make every effort to prevent public disclosure of the names of all parties involved, except to the extent necessary to find out what happened. When looking into the matter, particularly where a grievance is filed, the school should pay attention to any due process or other rights the accused student or teacher might have. However, the school should make sure that doing so does not interfere with the protections provided to the complainant by Title IX.

Finally, it is extremely important for a school to make certain, to the best of its ability, that no harm comes to a student for reporting incidents of sexual harassment. The school should take steps to prevent any retaliation by the alleged harasser or anyone else at the school. The school should tell the student that Title IX prohibits retaliation and reassure the student that the school will take strong responsive actions if it occurs.

**Q: What if the student who was harassed insists on confidentiality, or asks that the matter not be pursued?**

A: Sometimes, a student complaining of harassment may ask that his or her name not be used by the school in its investigation. Similarly, a student may even ask that the school take no action. In these situations, a school's ability to deal with

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the alleged harassment may be limited. However, a school may still be able to take some steps to address the matter. For example, a school should, at a minimum, report a sexual assault or other possible criminal activities to the police, even without a complaint from the student. Indeed this may be required by state or local laws.

In other, less severe cases, the school should at least keep track of the incident so that it can identify and take action against repeat offenders.

However, when faced with a request for confidentiality or to take no action, the school must consider whether the alleged harassment may affect other students. If so, the school may need to take action to prevent those students from being harassed.

### **Q: What should a school do if it determines that there had been sexual harassment?**

A: If a school finds out that there has been sexual harassment, it has an obligation to stop it and make sure that it does not happen again.

This includes ending any quid pro quo harassment, eliminating a hostile environment if one has been created, preventing the harassment from occurring again and, when appropriate, correcting its effects on the student who had been harassed.

The judgment and common sense of teachers and school administrators are very important elements of any response to sexual harassment, especially when dealing with very young children. For example, an appropriate response to unwanted sexual touching of an older student by another may be suspension. Where very young children are involved, however, a teacher or administrator may decide that the best way to deal with the situation would be through a discussion of respect for others, including not touching them inappropriately.

### **Q: What should be included in a school's grievance procedures?**

A: The regulations issued by OCR under Title IX require schools to have grievance procedures applying to all forms of sex discrimination.

While a school does not have to have procedures specifically addressing sexual harassment, such procedures are often the most effective way of preventing and dealing with this unique problem.

In any event, a school's grievance procedures should:

- give notice of the procedure, including where complaints can be filed, to students, parents of elementary and secondary students, and employees;

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- assign an impartial investigator to the complainant, and give the parties involved the opportunity to present witnesses and other evidence;
- set time frames for the major stages of the complaint process;
- give notice to the parties of the outcome[13] of the complaint;
- give an assurance that the school will take steps to prevent recurrence of any harassment and that it will correct its discriminatory effects on the complainant and others, where appropriate.

Although not required by Title IX, many schools find that their grievance procedures can be more effective if the procedures:

- provide an opportunity to appeal the findings and/or remedy;
- prohibit retaliation for filing a complaint or participating in an investigation or inquiry;
- include a voluntary and informal means for resolving complaints;
- keep students informed of the status of their complaints.

***The students have to know that if they decide to take some course of action, it's not going to be wasted time....If you take the risk to make a complaint, [that] it's going to be listened to...taken seriously and [that the institution is] going to follow through on it...and be very serious about it.[14]***

### **Q: What should a school do to publicize its policy against sex discrimination and its grievance procedures?**

A: The school should make sure that its policy and grievance procedures are widely distributed and easily understood by students, parents of elementary and secondary students, and employees. Steps a school can take are:

- publish the policy and grievance procedures as separate documents and make copies available at various locations throughout the school
- include the policy and a summary of the procedures in the school's major publications
- identify individuals who can explain how the procedures work
- designate an employee with in-depth knowledge of sexual harassment and the school's grievance procedures as the Title IX coordinator.

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### **Q: How does a student file an OCR complaint?**

A: If a student or a student's parent or other representative decides to file a complaint with OCR, the complaint should be filed with the OCR enforcement office responsible for the state in which the school is located. Generally, the complaint should be filed within 180 days of the last act of alleged discrimination.

The student should give OCR his or her name, address, and daytime phone number, and provide the date(s) and enough information about the alleged incident(s) so that OCR can understand the nature of the complaint.

OCR may extend the time for filing a complaint in certain circumstances, e.g., when a student files a grievance under school procedures within 180 days of the last act of alleged discrimination. Because OCR encourages the use of school grievance procedures, OCR will generally accept a complaint raising the same allegations up to 60 days after the end of the procedure. OCR case resolution would usually then be limited to the allegations raised in the grievance.

### **Conclusion**

OCR is the federal agency that ensures that schools comply with Title IX. Students should contact one of the OCR offices to receive information about filing a complaint. Schools should also contact one of these offices for technical assistance. For additional copies of this pamphlet or the Guidance, contact one of these offices or call the OCR Customer Service Team at (800) 421-3481.



## Endnotes

- [1] Stein, Nan, Marshall, L. Troop, R., Harassment in the Halls (Massachusetts: Center for Research on Women, Wellesley College, 1993)
- [2] Stein, N. & Sjostram, Lisa, Flirting or Hurting? A Teacher's Guide on Student to Student Sexual Harassment in Schools (Washington, D.C.: NEA Professional Library Publication, 1994) 66.
- [3] Winship, Beth, Ask Beth (San Francisco Chronicle, March 2, 1997).
- [4] Miranda, L., & Associates, Inc., interviews (1981).
- [5] Although sexual harassment of employees may violate Title IX, this pamphlet addresses only sexual harassment of students.
- [6] In Texas, Mississippi, and Louisiana, Title IX's prohibition on sexual harassment of one student by another has been affected by a federal decision covering these states. If you live in these one of these states and have been harassed or seek further information, please contact OCR's Dallas office for clarification.
- [7] Stein, Harassment 10. Most of the quotes contained in this pamphlet are from real life situations. These situations may or may not constitute unlawful sexual harassment, depending on all of the facts in each particular case. The perspectives reflected are intended to raise the awareness of students, school officials, and parents and indicate when it may be time to become concerned, speak up, and/or gather more information to determine an appropriate course of action.
- [8] Stein, Flirting 8.
- [9] Strauss, S., Sexual Harassment of Teenagers: It's Not Fun/It's Illegal (Minnesota Department of Education, 1981) 35.
- [10] Morris, B., Terpstra, T., Croninger, B., Linn, E. Tune In To Your Rights (Ann Arbor: University of Michigan, 1985) 8.
- [11] In Texas, Mississippi, and Louisiana, reporting sexual harassment by a school employee to a classroom teacher may not be considered adequate notification, according to a federal court decision. In these states, a student should report sexual harassment by a school employee to another staff person with authority over the employee or other high-level officials. If you live in one these states and have been harassed or seek further information, please contact OCR's Dallas office for clarification.

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[12] This quote is a composite drawn from different OCR cases.

[13] The Federal Educational Rights and Privacy Act of 1974, often known as the Buckley Amendment, imposes certain restrictions on a school's release of information contained in a student's education record. For more information, see OCR's Sexual Harassment Guidance or call the Family Policy Compliance Office, U.S. Department of Education, Washington, D.C. 20202-4605, at (202) 260-3887.

[14] Miranda.

## **Iowa Civil Rights Commission Sexual Harassment in Education Fact Sheet**

### **Sexual Harassment in Education: It's Against the Law**

#### **What is the scope of the problem?**

Acts of sexual harassment take place every day in schools across the country. Frequently these acts, even if reported to administration, are dismissed as harmless flirtation, as “kids will be kids,” or as “no big deal.” Many people do not realize that sexual harassment that interferes with a person’s educational progress is illegal, just as it is illegal in the workplace.

In a survey of 79 public schools across the United States, 81% of the students in grades eight to 11 experienced some form of sexual harassment. The results of this survey, completed by the American Association of University Women (AAUW), show that four out of five students who are harassed are targeted by a current or former student of their schools, with the remainder of the harassment coming from adults or school staff.

Although girls experience more sexual harassment, it can also happen to boys. And both boys and girls could be harassed by someone of the same sex. While the focus of this information sheet is on sexual harassment, harassment because of race, national origin, religion and physical and mental disability is also illegal.

Harassment is everyone’s problem. An educational institution that allows harassment to go unchecked can experience serious morale problems, resulting in poor working conditions for staff and an unsatisfactory educational experience for students.

#### **What is the impact of sexual harassment on the educational process?**

Students who have been harassed have reported the following feelings and actions:

- Not wanting to attend school; staying home, or cutting class
- Not wanting to talk as much in class
- Finding it hard to pay attention
- Making a lower grade on a test or in a class
- Wanting to change schools or even drop out
- Dropping out of chosen classes or field of study

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- Not being able to obtain customary recommendations or letters of reference from a teacher

There is also the emotional impact of feeling embarrassed, self-conscious, less confident, and guilty about being the target of harassment. Many victims report being afraid of the harasser and trying to avoid contact with this person.

### What actions are considered to be sexual harassment?

Sexual harassment consists of unwelcome visual, verbal or physical conduct of a sexual nature that interferes with a person's education process. The harassment may be ***quid pro quo***, in which a person in authority demands sexual favors in return for a benefit for the student, such as a passing grade or admission to a class or program. A second type of harassment is ***hostile environment***, in which a student is subjected to sexual conduct that creates an offensive, hostile or intimidating atmosphere in the school. Some of these behaviors are:

- Making comments about a person's body or sex life
- Making sexual comments, jokes, gestures
- Looking or staring at a person in a sexual manner
- Touching, grabbing, pinching, or brushing up against in a sexual way
- Flashing or mooning
- Spreading rumors about a person's activities or relationships
- Blocking passage in a sexual way
- Writing sexual messages, love notes or sexual graffiti
- Pulling clothing down or off
- Calling a person gay or lesbian
- Spying on someone while showering or dressing
- Forcing kisses or other sexual advances
- Forcing someone to look at sexual pictures or materials.

In the AAUW Survey, hallways and classrooms were the places where harassment most frequently took place. This was in spite of the fact that these places are public and other people are usually present. Other places where harassment took place included school grounds, gymnasium, pool, locker rooms, restrooms, parking lot, school busses and on field trips. For many young people, school is not a safe place.

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### What do the laws say?

**Federal law:** Title IX of the 1972 Educational Amendments prohibits differential treatment on the basis of sex. This applies to any educational program or activity which receives federal funds, and protects both employees and students.

To initiate a complaint under this law, contact:

Office for Civil Rights, U.S. Dept. of Education, 816-860-4200

**State law:** *Iowa Code* Section 216.9 prohibits discrimination on the basis of sex in any academic, extracurricular, research, occupational training, or other program or activity (except athletic programs). While harassment is not expressly prohibited, harassment is considered to be a form of sex discrimination. This law applies to any preschool, elementary, secondary, community college, area education agency, or post-secondary college or university. To file a complaint under state law, contact the Iowa Civil Rights Commission.

### What do schools need to do about sexual harassment?

An important part of a school's program is to take steps to prevent sexual harassment before it occurs. An institution needs to raise the issue and confront harassment before it becomes a problem.

- Under Title IX, schools should have a policy prohibiting sexual harassment. Administrators, teachers and students must be informed of the policy.
- Under Title IX, schools must establish a grievance procedure that is adequate and suitable for dealing with sexual harassment complaints.
- Acknowledge the problem; don't deny that it could happen in your school.
- Provide training to administrators, staff and students so that they understand and recognize prohibited behavior and how to report it.
- Administrators, teachers and adult staff should set a good example of professional behavior.

Once a sexual harassment complaint has been filed, the school administration needs to take prompt remedial action.

- When a harassment complaint is filed, take it seriously. Assure the person that a prompt and confidential investigation will take place.
- Designate and train persons to investigate complaints. Sensitivity to the problem, sound professional judgment, and knowledge of legal standards of investigation are important.

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- If the investigation shows that the harassment did happen, take prompt disciplinary action against the harasser.

### What can you do if sexual harassment happens to you?

Remember, sexual harassment is **not** your fault. You have a right to an educational setting free of harassment. Do not feel powerless. There are actions you can take to end the harassment.

- Don't ignore the harassment; it usually doesn't go away by itself, and may get worse if no action is taken.
- Tell the harasser in person or in writing that the behavior is not welcome. Ask them to stop. Be specific about actions or words that make you uncomfortable.
- Tell someone else about the harassment, a trusted adult such as a parent, teacher, counselor, or friend.
- Keep a written record of the incidents of harassment. This will be important if an investigation becomes necessary. Make note of any witnesses who might have observed the incident.
- If the harassment does not stop, report it to school administration. Ask a parent or friend to go with you if you need support. Insist that the school not ignore the situation.
- If the institution does not take prompt action to stop and resolve the harassment, file a complaint with an outside agency such as the Iowa Civil Rights Commission or the U.S. Department of Education.
- If you are a friend of someone who is being harassed, offer your support and be a good listener. Urge them to report the harassment.

### Resources

Stein, Nan, Nancy L. Marshall, and Linda R. Troop, *Secrets in Public: Sexual Harassment in Our Schools*. Center for Research on Women, Wellesley College, c 1993.

*Hostile Hallways: The AAUW Survey on Sexual Harassment in America's Schools*. AAUW Educational Foundation, c 1993.

*Tune In to Your Rights: A Guide for Teenagers About Turning Off Sexual Harassment*. Center for Sex Equity in Schools, The University of Michigan, c 1985.

*Sexual Harassment: It's Not Academic*. U.S. Department of Education, Office for Civil Rights, c 1991.

Wheeler, Molly, ed. *No Big Deal: A Sexual Harassment Training Manual for Middle School and High School Students*. Iowa Department of Education, Educational Equity Project, 1993-94.

# Appendix D:

## Forms

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## A Support Manual





# Harassment/Bullying/Hazing Complaint Form

Is this form being filed because of retaliation for filing an earlier complaint? Yes\_\_\_\_\_ No\_\_\_\_\_

Name of complainant: \_\_\_\_\_  
(Student, Parent, Employee, Other — Please Specify)

Date of complaint: \_\_\_\_\_

Name(s) of student(s) alleged to be responsible for incident: \_\_\_\_\_

Date and place of incident or incidents: \_\_\_\_\_

Describe what happened: (Use back of form or attach additional pages if necessary) \_\_\_\_\_

Name(s) of witness(es) \_\_\_\_\_

Is there any documentation of the incident? Yes\_\_\_\_\_ No\_\_\_\_\_ Please attach evidence or explain why not \_\_\_\_\_

Any other relevant information: \_\_\_\_\_

I feel I was harassed, based upon: \_\_\_\_\_  
(LIST ALL THAT APPLY) sexual orientation (real or perceived) / race / color / religion / creed / disability / national origin / ethnicity / physical appearance (e.g., dress, physical differences) / personal characteristics (specify) / marital status

I feel I was a target of hazing because I am a member, or wish to be a member, of a: \_\_\_\_\_  
(LIST ALL THAT APPLY) club / organization / grade level / other (please explain)

I agree that all of the information on this form is accurate and true to the best of my knowledge.

Complainant: \_\_\_\_\_ Interviewer: \_\_\_\_\_

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# Interview Notes Form

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Name of Interviewee: \_\_\_\_\_

Name of Interviewer: \_\_\_\_\_

Date of Interview: \_\_\_\_\_

Description of Incident: \_\_\_\_\_

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Any other information: \_\_\_\_\_

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Attach written statement(s), or other evidence (if any):

Signature of Interviewer: \_\_\_\_\_

Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

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## Bullying/Harassment/Hazing Tracking Sheet

School: \_\_\_\_\_ Investigator: \_\_\_\_\_ Dates: \_\_\_\_\_ to \_\_\_\_\_

[illegible]

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